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# CALIFORNIA ENVIRONMENTAL QUALITY ACT: INNOVATION IN STATE AND LOCAL DECISIONMAKING

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Center for California Public Affairs

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The California Environmental Quality Act of 1970 requires State and local agencies to prepare an environmental impact report on public and private projects that may have a significant effect on the environment. The development and current status of California's environmental impact assessment program is described. CEQA's greatest impact has been on private projects permitted by cities and counties. In many localities, environmental impact reports clearly influence decisions on such permits. Still, some State and local agencies are not fully complying with CEQA, and the act's implementation is hampered by the lack of a State agency with authroity and resources to enforce it. Based on California's experience, some general recommendations are made for other States considering adopting similar requirements.

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# CALIFORNIA ENVIRONMENTAL QUALITY ACT:
# INNOVATION IN STATE AND LOCAL DECISIONMAKING

by

Thaddeus C. Trzyna and Arthur W. Jokela

Contract No. 68-01-1818
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# FOREWORD

The widespread use of environmental impact analysis as a means of achieving Federal agency decisionmaking responsive to environmental concerns was initiated by the passage of the National Environmental Policy Act of 1969. The Act required that Federal agencies prepare statements assessing the environmental impact of their major actions significantly affecting the human environment.

In subsequent years, Federal agencies developed procedures for the preparation of environmental impact statements, often requiring similar analyses and statements from local governments and the private sector as a requirement for the award of Federal permits or grants. In addition, some States adopted environmental impact statement requirements.

Recent revisions of guidelines for the preparation of Federal impact statements, issued by the Council on Environmental Quality, have defined clear requirements as to what can be expected in impact statements from Federal agencies. However, such uniformity of procedure and approach has not been extended below the Federal level on either Federal agency requirements or individual State requirements. Further, while the guidelines may specify what is desired in Federal impact statements, technical approaches to meeting these objectives may not always be available and universally acceptable.

As a part of its series of Socioeconomic Environmental Studies, the Environmental Protection Agency, Office of Research and Development, is conducting research whose objectives are to:

-- Improve the technical quality of environmental impact analyses in areas of Agency responsibility;

-- Improve the ability of the Agency to provide substantive technical review of environmental impact statements prepared by other agencies; and

-- Improve the effectiveness of the use of environmental impact analysis in influencing decisionmaking at all governmental levels.

This publication is the third of a three-part series of reports on environmental impact analysis requirements several State governments have instituted. The first two reports[1] analyzed requirements of the various States. The present report provides a more detailed analysis of the environmental impact reporting program instituted in California, the most extensive of the State programs.

This series of studies is being conducted by Thaddeus C. Trzyna and Arthur W. Jokela and their associates at the Center for California Public Affairs (an affiliate of The Claremont Colleges), 226 W. Foothill Boulevard, Claremont, California 91711, under contract to the Washington Environmental Research Center.

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# ABSTRACT

The California Environmental Quality Act of 1970 (CEQA) requires State and local agencies to prepare an environmental impact report on public and private projects that may have a significant effect on the environment. It is patterned after the National Environmental Policy Act of 1969.

The development and current status of California's environmental impact assessment program is described. CEQA was virtually ignored during its first two years, largely because there was no clear authority or deadline for issuance of detailed guidelines. The turning point was CEQA's judicial discovery and enforcement by the California Supreme Court, and its subsequent amendment by the State Legislature.

CEQA's greatest impact has been on private projects permitted by cities and counties. In many localities, environmental impact reports clearly influence decisions on such permits. Still, some State and local agencies are not fully complying with CEQA, and the act's implementation is hampered by the lack of a State agency with authority and resources to enforce it. Based on California's experience, some general recommendations are made for other States considering adopting similar requirements.

This report was submitted in partial fulfillment of Contract No. 68-01-1818, Program Element 1HA095, under the sponsorship of the Office of Research and Development, Environmental Protection Agency.

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# SECTION I

# CONCLUSIONS

1. The California Environmental Quality Act was slow to be implemented largely because the law as originally enacted left important questions unanswered and failed to provide clear authority and a deadline for issuance of detailed guidelines.

2. Implementation of CEQA is still hampered by the lack of a State agency with authority, staff, and funding to monitor and enforce its application.

3. CEQA's greatest impact has been on private development projects licensed by cities and counties.

4. While most State and local agencies at least attempt to carry out their responsibilities under CEQA, there is some evidence suggesting that some agencies are not complying fully with the act.

5. Some progressive local governments have applied CEQA in creative ways that suit local conditions. The diversity of environmental impact assessment practices in California could be beneficial to other States in illustrating different approaches that could be useful in their own jurisdictions.

6. Because of the considerable variation in approaches taken by local governments, it is difficult to generalize about the effectiveness of California's program. However, environmental impact reports certainly provide a better factual basis for decisionmaking, and in many cases clearly influence decisions.

7. Relatively few permits for projects are flatly denied as the result of an environmental impact report. However, it is common for projects to be modified during the review process. Also, CEQA discourages "bad" projects from being started, and it encourages developers to design their projects from the beginning with the knowledge that environmental damage must be avoided or mitigated.

8. CEQA has encouraged public participation, and it has helped to educate those who make decisions.

9. California State policymakers lack systematic information about what is actually happening and what works at the local level concerning

CEQA. This is a major constraint against development of sound statewide land use policies.

10. There is a need to integrate the environmental impact assessment system into the planning process, and eventually into the development of a more comprehensive approach to environmental quality management.

11. Professional, governmental, and citizens' groups with vested interests in CEQA are emerging; this may help to insure a continuing role for environmental analysis in planning and decisionmaking in California.

# SECTION II

## RECOMMENDATIONS

States considering adopting or expanding environmental impact assessment procedures can benefit from California's experience, as well as the experience of other States with similar programs. However, it is difficult, based on our study of CEQA, to make specific recommendations for designing and implementing such a program in other States because of the wide variation in State and local problems, needs, laws, institutions, and political cultures. We would make the following general suggestions:

1. A State environmental impact assessment program should be based on careful analysis of existing State and local environmental protection mechanisms, and should be designed to complement and be closely integrated with other ongoing processes of public management of land use and environmental quality.

2. The Suggested State Environmental Policy Act developed by the Council of State Governments[2] can be an excellent starting point for drafting legislation; however, the exact language should reflect the State's special needs.

3. The requirement for environmental impact statements should apply to private, as well as public, projects. (The Suggested Act provides this.)

4. Since, in most States, the great majority of land use decisions is made by local governments, the requirement for environmental impact statements should apply to actions of local, as well as State, agencies. The State Government should set minimum standards for local impact assessment programs, but allowance should be made for adaptation of the procedure to local needs and programs. (The Suggested Act contains alternative language extending the requirement to local governments.)

5. A single, high-level agency should be given clear legal authority to issue detailed guidelines for implementation of the State law (with a deadline for issuing them) and to review and enforce local and State agency procedures. This agency should be given adequate funding and staffing.

6. The responsible State agency should make a concerted effort to stimulate two-way communication on the environmental impact process. This might include an information and education program directed especially toward public officials, developers, and environmentalists. It might also include some formal means of feedback from all of the affected sectors, perhaps in the form of a well-balanced advisory committee. A training program for State and local officials directly concerned with the process would also be useful.

# SECTION III

## INTRODUCTION

Probably no single law has had as great an effect on environmental decisionmaking at the Federal level than the National Environmental Policy Act of 1969 (NEPA), which requires an environmental impact statement to be prepared in advance of major Federal actions which significantly affect the quality of the human environment.

Encouraged by NEPA's accomplishments, some 15 States have now adopted analogous procedures for projects affecting environmental quality that require State or local permits, and at least twenty other States have such requirements under consideration.[3] California's system is the oldest and most extensive of these State programs. The California Environmental Quality Act (CEQA) requires environmental impact reports to be prepared on a wide range of public and private projects licensed by State agencies, counties, cities, and other local governments.

This study describes the development of California's environmental impact assessment program from the enactment of CEQA in 1970 through the spring of 1974. We hope it will be helpful to other States that are considering the adoption or expansion of environmental impact requirements.

Our study concentrates on the public policy and administrative aspects of the CEQA story, rather than its technical legal aspects, which have been discussed extensively elsewhere (see the bibliography). One important and still unresolved legal question is whether CEQA imposes a duty on agencies to prevent environmental damage.[4] A finding by the courts that the act does impose such an obligation would give greater importance to the role of the environmental impact report.

This report is based on interviews and correspondence with State and local officials, citizen environmentalists, consultants, attorneys, and developers throughout California; review of published material, including the legal literature and legislative and administrative documents; review of certain files of the State Resources Agency; and attendance at several conferences. Research was completed in May 1974.

A future report will discuss in greater detail the implementation of CEQA at the local level.

## SECTION IV

## CONTEXT: STATE AND LOCAL GOVERNMENT ROLES

The California Environmental Quality Act of 1970 imposed a new series of requirements on an already complex structure of State, local, and regional environmental programs. It was only one of several far-reaching measures enacted in California in the late 1960s and early 1970s in response to a need for new means of dealing with the State's critical environmental problems. Thus, a brief description of the roles in environmental management of State agencies, cities, counties, and other forms of government in California might be helpful in understanding the successes and failures of CEQA.

### THE ROLE OF STATE GOVERNMENT

Responsibility for managing and protecting California's environment is divided among a maze of Federal, State, regional, and local agencies. The role of State Government is limited by two major factors. First, nearly half of the State's land area (49%) is under the direct control of the Federal Government. Second, California has a strong tradition of home rule. Many of the most important decisions relating to environmental quality, including most land use decisions, are left to local governments.[5]

The State retains ultimate authority over non-Federal lands, however, and over the years it has kept direct jurisdiction in a number of key areas. Recently, the State has been assuming greater powers in fields where local governments have been slow to act. For example, State agencies have full or substantial authority over water quality matters, development of water resources, rural subdivisions, vehicular sources of air pollution, forest practices, fish and wildlife, the use of pesticides, and numerous specialized activities such as the siting and undergrounding of utility lines and oil and gas well drilling. State agencies also have permit authority over uses in the coastal zone, San Francisco Bay, and State-owned tidelands and submerged lands.[6]

Some of the most significant new environmental programs created by State legislation operate not through agencies of State government, but rather by imposing requirements on local governments. Typically, in such cases, the State's role is limited to coordination; there are no specific provisions for monitoring or enforcement, other than judicial review. These programs include the requirement that cities and

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counties adopt a general plan with specified elements, and the environmental impact requirement imposed on local governments under CEQA.

Most State environmental functions are within the Resources Agency, one of four State Agencies under the Governor which were created in 1961 to coordinate the activities of groups of departments, boards, and commissions. The Resources Agency differs from the environmental "superagencies" created recently in some other States[7] in two important respects. First, it includes units which have development, as well as regulatory, functions. Second, decisionmaking is decentralized. Policies for most departments within the Agency are made by autonomous, single-purpose boards or commissions created by statute.

Several key environmental quality functions are located outside the Resources Agency. Some of these functions are administered by departments located within the other three Agencies. The State planning function, as in most States, is within the Governor's Office. But the State Attorney General, who is authorized by statute to intervene in any judicial or administrative proceeding related to environmental quality "which could affect the public generally," [8] is an elected official who is independent of the Governor. The California Coastal Zone Conservation Commission, created through the initiative and referendum process, is also independent (though a third of its members are appointed by the Governor).

## THE ROLES OF LOCAL AND REGIONAL GOVERNMENT

California has two levels of general-purpose local government: counties and cities. About 80% of the population lives within the boundaries of some 400 cities, which range in size from the City of Los Angeles, with 2.8 million people, to small communities of a few hundred. The 58 counties are responsible for providing municipal services to the unincorporated areas outside city limits, which include some highly urbanized, as well as rural, areas.

From the standpoint of environmental management, the roles of cities and counties are similar. Each of the 78 cities in Los Angeles County, for example, is responsible for land use planning and zoning within its boundaries. The county government is responsible for planning and zoning outside the cities. Cities and counties also have primary responsibility within their areas for such functions as roads, parks, sewage disposal, harbors, and airports, though in some cases these activities are handled by special districts.

In some fields, county governments have authority over their entire areas, including the incorporated cities. Such responsibilities include regulation of stationary sources of air pollution, enforcement of public health standards, and airport zoning.

The cities and counties have a key role in environmental management that is by no means limited to carrying out State-mandated requirements. Under their general police powers, and under a variety of permissive State laws, they have fairly wide latitude to shape their physical surroundings.[9] Some local governments have made good use of this authority. They have created extensive systems of parks and parkways, for example, banned development in scenic or ecologically significant areas, instituted strict architectural and sign controls, enacted strong noise control ordinances, and contracted with land owners to preserve agricultural lands threatened by urbanization. Most local governments, however, have taken little advantage of the opportunities open to them. Many are reluctant to carry out even the minimum programs required by State legislation.[10]

The basic State-mandated local environmental management program is the general plan. Under the State Planning Act,[11] each city and county must establish a planning agency to develop and maintain a general plan containing a statement of development policies along with maps and text indicating the proposed uses of land for various purposes. First required in 1955, the general plan originally consisted of two mandatory "elements": land use and circulation. A housing element was added in 1969.

The general plans of cities and counties have been oriented more toward orderly development, rather than maintaining or improving the quality of the local environment, minimizing effects of environmental hazards, or avoiding misuse of natural resources. Commonly, they have reflected existing and projected, rather than ideal, patterns of use. Problems such as preservation of open space lands, geologic hazards, and flooding have usually received scant attention.

Also, even when carefully prepared, a general plan by itself has not necessarily meant very much. Zoning -- and thus the uses permitted under zoning ordinances -- has not been required to conform strictly to the general plan, and in any case, the plans have been relatively easy to change. Under political pressure from developers, local authorities have not infrequently decided to allow uses incompatible with the general plan, or to amend the plan itself.[12]

Recent additions to the State Planning Act are changing this. The general plan document itself has been strengthened by the addition of six new mandatory elements: conservation (which includes water quality, soil erosion, flood control, and several other specified matters), open space, seismic safety, noise, scenic highways, and safety. More important, zoning -- and thus actual use of land -- must conform to the general plan by January 1, 1974. The law now also forbids adopting changes in the general plan more than three times a year (although annual review will be necessary), and requires a delay after a general plan is changed before any related zoning changes can be made.[13]

Cities and counties are not the only forms of local government in California. Often cutting across their boundaries, and usually governed separately by elected or appointed boards, are some 3,500 limited-purpose "special districts." Most of them are involved in some way in activities that affect environmental quality. They range from small soil conservation, irrigation, and mosquito abatement districts, to urban public utility and mass transportation districts, to huge agencies such as the 4,800-square-mile Metropolitan Water District of Southern California, which supplies supplemental water to most of the Los Angeles-San Diego region. These special districts tend to be much less subject to public scrutiny than cities or counties.[14]

There are a number of regional agencies (that is, agencies that are concerned with more than a local area) whose activities affect the quality of California's environment. Some of these agencies are organized as special districts, for example, the Metropolitan Water District, and the three-county San Francisco Bay Area Rapid Transit District. Other regional bodies are special units of State Government created to deal with problems of critical areas, for instance, the six Regional Coastal Zone Conservation Commissions, and the California Tahoe Regional Planning Agency.

Regional councils of governments (COGs) are another type of regional agency. Organized to discuss, study, and develop recommendations on regional problems of mutual concern, with a major emphasis on transportation and environmental planning, COGs are composed of representatives of cities and counties within their boundaries. Strictly speaking, COGs are not governmental agencies because they lack any authority. Membership in them is voluntary, and some cities and counties have refused to participate. Their recommendations are only advisory.

# SECTION V

## CEQA: THE LAW AND ITS ORIGINS

### ENACTMENT

The California Environmental Quality Act (CEQA) was one of several bills introduced in the 1970 Session of the California Legislature by the Assembly Select Committee on Environmental Quality. This special, temporary body, composed of chairmen of standing committees concerned with matters related to the environment, was charged by Speaker Bob Monagan with developing a "comprehensive environmental program" for the State.[15]

Considering the controversy that has surrounded it, CEQA was enacted with surprisingly little dissent. The committee's bill, AB 2045, was approved in somewhat amended form by the Assembly by a 59-7 vote, and passed the Senate in a slightly different version, 39-0. The Assembly concurred in the Senate amendments, 62-1, and CEQA was signed by Governor Ronald Reagan on September 18 without comment. It took effect on November 23, 1970.[16]

Why did CEQA become law so easily? One reason, perhaps, is that 1970 was the "year of the environment" (April 22 was celebrated as the first Earth Day), and public concern was at a high level. Citizens' groups, the media, and elected officials were calling for something to be done about the deteriorating quality of the State's environment. In February, the State Environmental Quality Study Council, an official body created by a 1969 statute, reported that,

> Our in-depth study of California's environmental ills has revealed an extremely pessimistic picture. Our beautiful State is in severe danger of being destroyed as a desirable place to live... It is even questionable whether major portions of the State will be capable of supporting tolerable human life within several more decades.
>
> Having been called upon for the past 25 years to accommodate one of the greatest bursts of inmigration and population growth the world has ever known, California's legendary environmental assets have been squandered in a grossly negligent fashion, and much of it obliterated beyond repair. If the present course is continued, our posterity will inherit a vast wasteland.[17]

The chairman of the select committee, Assemblyman George Milias, described the political climate of 1970 in these words:

> The environment issue was like an iceberg. It had been there for years but most of it was not visible. There was a tremendous body of public opinion that had been growing and growing until all of a sudden it was just enormous. Then a few things happened. There was the Santa Barbara oil spill. Some of the more literate individuals began to come out with publications like the Population Bomb. You had quite a bit of talk about pesticide problems and DDT in fish and other wildlife. All of a sudden people got very, very uptight about the environment, and that's why it became a big issue in 1970.[18]

Yet, despite this aroused interest, the record shows that the Legislature took little action. Of some 300 environmental bills introduced in 1970, only a handful became law.[19] Among the major measures that failed to pass were bills to plan for and protect the coastline, to prohibit power plants in parks, and to use up to one cent per gallon of State gasoline taxes to combat air pollution.[20] The one other basic measure proposed by the select committee (in addition to CEQA), an "Environmental Bill of Rights" to be included in the State Constitution,[21] was also defeated. Two prominent environmentalists later wrote that the 1970 Session yielded "more stagecraft than statecraft."[22]

One plausible explanation for CEQA's easy passage might be that it was, on its face, a fairly simple measure, consisting of a broad declaration of environmental policy and a requirement that State and local agencies prepare an environmental impact report on any project which "could have a significant effect on the environment." Its operative provisions appeared to be procedural, rather than substantive.

Also, there was an important precedent. Although the select committee's report fails to mention it, CEQA clearly was patterned after the National Environmental Policy Act of 1969 (NEPA), signed by President Nixon on January 1, 1970 as his first official act of the new decade. One thing is certain: CEQA was understood by some legislators to apply only to projects undertaken directly by governmental agencies and not to private projects permitted or funded by government. Most of the controversy over CEQA would be over its application to such private activities.

## NEPA, THE PARENT

The National Environmental Policy Act[23] has been described as "the most important piece of environmental legislation ever written." [24] NEPA accomplished several things. First, it declared a broad national policy for environmental protection.[25] Second, it created certain "action-forcing" procedures to insure that the policy is carried out.[26] Third, it established a Council on Environmental Quality in the Executive Office of the President.[27]

Of the action-forcing provisions in NEPA, the most innovative and far-reaching is the requirement, in Section 102 (2) (C), that Federal agencies prepare an environmental statement in advance of "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." These statements must include certain specified elements, including a discussion of alternatives to the proposed action, and they must be circulated for comment to other Federal agencies, affected State and local governments, and the public.

The primary purpose of this process is to force full disclosure of the environmental consequences of a proposed action, thus alerting agencies, the public, and ultimately the President and the Congress to the environmental risks involved. An important and intended result is to build into the decisionmaking processes of Federal agencies a continuing and systematic consideration of environmental factors.[28]

Although NEPA applies only to Federal agencies or to Federally-funded or -licensed projects, State and local agencies become involved significantly in the resulting process. Many of their own projects may require an impact statement under NEPA if Federal funds are to be used (for example, in the case of an interstate highway). State and local authorities are also asked to comment on impact statements for Federal projects affecting their areas.[29]

As important as this involvement is, the adoption by the States of "little NEPAs" extending the environmental impact requirement to State and local actions not subject to the Federal law will probably have a far more profound effect on environmental decisionmaking below the national level. In enacting CEQA, California became the first State to establish an environmental impact requirement patterned after NEPA (although a Puerto Rico statute preceded it by a few months). Since then, another 14 States have enacted "little NEPAs." While a few of these States have made innovative departures from the

Federal model, California's law has had the broadest effect.[30]

## CEQA, THE OFFSPRING

As enacted in 1970, CEQA consisted of a declaration of legislative findings and policy and two operative chapters requiring environmental impact reports to be prepared on State and local projects, respectively. (The term "environmental impact report" is used in the California act; the words "environmental impact statement" are usually used to describe the document required under the Federal law.) Unlike NEPA, CEQA did not establish an agency like the Federal Council on Environmental Quality.

While much of CEQA was subsequently amended, its declaration of findings and policy has remained unchanged.[31] Among other things, the act declares that it is the policy of the State to:

> Develop and maintain a high quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.
>
> Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise...
>
> Ensure that the long term protection of the environment shall be the guiding criterion in public decisions...
>
> Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.
>
> Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.[32]

As enacted in 1970, the first operative chapter of CEQA required all "state agencies, boards and commissions" to prepare an environmental impact report (EIR) on "any project they propose to carry out which could have a significant effect on the environment of the state."

(NEPA requires an impact statement on "legislation and other *major* Federal *actions* significantly affecting the quality of the *human* environment.")[33] Six specific points of information were to be covered in an EIR:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact.

(d) Alternatives to the proposed action.

(e) The relationship between the local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.[34]

These elements are substantially the same as those listed in NEPA,[35] with the exception of the "mitigation measures" item. NEPA itself does not specifically address the mitigation issue; however, the guidelines issued by the Council on Environmental Quality for the implementation of the Federal act cover it under the category of "alternatives to the proposed action."[36]

This chapter of CEQA also specified that State comments on any proposed Federal project include an EIR. No State report on such a project could be transmitted to the Federal Government unless it included such a statement. In effect, this meant that the State was required to prepare an EIR on a Federal project even when no environmental impact statement under NEPA was required.[37] Also, no State agency could provide or request funds for a project which could have a significant effect on the environment unless an EIR had been completed. Projects involving only planning were exempted from this requirement.[38]

Before issuing an EIR, the "responsible state official" was required to consult with, and obtain comments from, "any governmental agency which has jurisdiction by law or special expertise with respect to any environmental impact involved."[39] The EIR, along with any comments received from other agencies, was to be included as part of the regular project report used in the existing review and budgetary process. The EIR was to be available to the Legislature and to the general public.[40] All State agencies were to request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.[41] All State agencies were to review their statutory authority, rules, regulations, policies, and procedures to determine any inconsistencies which would "hinder compliance" with CEQA, and were to propose any measures needed to comply with the act to the Governor and the Legislature no later than January 1971.[42] The Office of Planning and Research in the Governor's Office was designated to "coordinate the development of objectives, criteria, and procedures to assure the orderly preparation and evaluation" of EIRs.[43]

The second operative chapter of CEQA related to local governments. State agencies allocating State or Federal funds on a project-by-project basis to local agencies for land acquisition or construction projects which might have a significant effect on the environment were to require an EIR from the responsible local agency prior to allocating funds, except for planning purposes.[44]

Finally, CEQA provided that:

> The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any projects they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by Section 65402 of the Government Code.[45]

The great majority of cities and counties had not adopted a conservation element of a general plan (this was not to become mandatory until December 31, 1973[46]) and thus most local governments were required to prepare EIRs.

## SECTION VI

## BEGINNINGS

### UNANSWERED QUESTIONS: WHO WOULD ANSWER THEM?

CEQA left a number of important issues unanswered. An EIR was to be required for any "project" which could have a "significant effect" on "the environment." Did the term "project" encompass governmental actions other than public works activities, such as zoning or the setting of utility rates? Did it include matters involving governmental licensing or funding of private activities? Did the EIR requirement apply to so-called "beneficial" activities conducted for the express purpose of protecting the quality of the environment, for example, setting air and water quality standards? In operational terms, what was a "significant effect"? What, after all, was "the environment"?

Further, did the new law apply to continuing projects that had been started, authorized, or funded prior to the date it went into effect? Were local governments other than cities and counties -- school districts and special districts -- included in the EIR requirement? What about emergency or temporary projects? How was an EIR to be "made available" to the "general public"? How was the EIR requirement related to other State and local environmental programs such as the general plan?

Obviously, detailed guidelines for the EIR program would be needed before CEQA could be implemented by the hundreds of State and local agencies that were affected by the act. But the law was vague on how such guidelines were to be issued. It merely said that the Office of Planning and Research "shall, in conjunction with appropriate state, regional, and local agencies, coordinate the development of objectives, criteria, and procedures to assure the orderly preparation and evaluation of environmental impact reports." 47

How the State Administration handled the problem of the CEQA guidelines is best described by comparing the California experience to the Federal experience under NEPA.

Like CEQA, NEPA was a rather vague statute. But shortly after NEPA was enacted, President Nixon issued an executive order directing the newly-created Council on Environmental Quality (CEQ), part of the Executive Office of the President, to issue guidelines to Federal agencies for preparing and processing environmental impact statements.[48] CEQ's guidelines were issued in interim form on April 30, 1970, four months after the act went into effect.[49] They answered many of the questions raised by NEPA, and tended to guide agencies toward a "broad reading" of the law.[50] Various terms used in the act, including "significant effect" and "major action," were defined in some detail. Deadlines were set down for the adoption by agencies of formal procedures for processing environmental impact statements. Most significantly, the guidelines made clear that NEPA extended not only to projects undertaken directly by Federal agencies, but also to private activities involving Federal funding or "involving a Federal lease, permit, license, certificate or other entitlement for use."[51]

CEQ's role was limited mainly to promulgating the guidelines and persuading agencies to comply with NEPA. It had no enforcement authority. Much of NEPA's fleshing out would be left to the courts and to the responses of the individual agencies. Nevertheless, CEQ's broad interpretation of NEPA and the active role that it took in publicizing the act's requirements, in involving the public in the process, and in working with agencies to set up and improve their procedures, did much to get the Federal environmental impact statement process firmly established within a year after NEPA was enacted.

In contrast to the NEPA experience (and notwithstanding the fact that California could draw on that experience in developing its own guidelines), implementation of CEQA got off to a very slow start. Part of the reason for this was probably that no agency had clear authority simply to "issue" guidelines for CEQA (as did the Federal Council on Environmental Quality for the NEPA guidelines). The Office of Planning and Research (OPR) was directed only to "coordinate the development" of guidelines in conjunction with other agencies.

Like CEQA, OPR was a brainchild of the Assembly Select Committee on Environmental Quality. A part of the Governor's staff, it was assigned "primary responsibility for assuring orderly operation of the process of environmental policy development and implementation within state government." However, its mandate specifically denied it "any direct operating or regulatory powers."[52] OPR was also given the duty of preparing and maintaining a comprehensive State "Environmental Goals and Policy Report," a document which was to "serve as a basis for judgments about the design, location and priority of major public programs...including the allocation of state resources for environmental purposes."[53]

By placing OPR in the Governor's Office, the select committee intended to make planning and environmental policy development an integral part of the management of the Executive Branch under the direct supervision of the Chief Executive.[54] Recent experience in other States tends to affirm the validity of placing this function close to the Governor.[55] However, the Administration gave OPR a rather small staff and budget.[56] The first "Environmental Goals and Policy Report" issued by the office stated:

> State Government should intercede in local matters only where necessary to mediate jurisdictional disputes or where environmental problems and/or resources are of such a magnitude or unique quality that their significance extends beyond local jurisdictional boundaries.[57]

Thus, in view of the limited role given to OPR by both the Legislature and the Administration, it was not surprising that the Administration decided to give primary responsibility for developing the CEQA guidelines to the Resources Agency.[58] While it seemed reasonable to place this responsibility in the hands of an operating line agency, rather than a staff research office, this also had its disadvantages. First of all, the Resources Agency is a fairly loose collection of departments, boards, and commissions, all with varying degrees of autonomy, and which often have conflicting aims. The role of the Secretary for Resources is limited by law to "general supervision" over these units.[59] Second, some important State activities subject to the EIR requirement are located outside the Resources Agency.

Delegated the rather vague responsibility of "coordinating the development" of EIR guidelines, the Resources Agency -- more specifically the Office of Secretary for Resources Norman B. Livermore, Jr. -- began early in 1971 to develop such a document through a process of circulating drafts to concerned State offices. It was a slow and difficult process. A major barrier in developing the guidelines, as policy-level officials repeatedly emphasized to us, was the resistance of the bureaucracy. Many members of single-purpose departments both inside and outside the Resources Agency were accustomed to playing down or ignoring the broad environmental consequences of their actions. They considered the new EIR program an intrusion, and made every attempt to minimize its impact on their activities. There was considerable disagreement among agencies as to what the guidelines should say, and it was not until June that the first formal draft was issued to the public.

## THE 1971 DRAFT GUIDELINES

The "proposed guidelines" issued in June 1971 by the Resources Agency[60] gave a narrow view of CEQA: although the act called for guidelines on local, as well as State, EIRs, only State activities were covered.[61] Hearings were held on the document in July, where numerous objections were raised by environmentalists and others. However, the most cogent expression of these objections was in a petition issued two months later by the State Attorney General, Evelle J. Younger.[62]

In the Attorney General's petition, Deputy Attorney General Nicholas C. Yost stated:

> [CEQA] is perhaps the most far-reaching environmental legislation ever enacted in California. It makes environmental factors a part of all governmental decision-making in California. The guidelines promulgated under it, if adopted so as to comply with the Act, will have enormous potential to contribute to the preservation and enhancement of California's environment... This Act can and will be the subject of a vast amount of litigation. The experience of the federal courts under the parent statute, [NEPA], will be repeated at the state level... We trust that California's administrative regulations interpreting [CEQA] will be legally sufficient and will conform to both the letter and the spirit of the Act. Only this will serve the statutory purpose of making environmental values the primary ones to be protected.[63]

The petition alleged that the proposed guidelines were an "unnecessarily crabbed" interpretation of CEQA. It called attention to the absence of procedures for local governments, and questioned the authority of the Resources Agency to "officially adopt" the guidelines ("the Office of Planning and Research is charged with this task").[64] The Attorney General criticized the policy statement in the guidelines, which said that the "purpose" of CEQA was to "provide relevant environmental information" to agencies and the public.[65] The petition countered that the law was "not restricted to the provision of information... the Act builds the environment into all phases of governmental decision making."[66]

The Attorney General considered the guidelines deficient in many other respects, including their treatment of exemptions to the EIR requirement, the content of the EIR, the requirement that agencies preparing an EIR consult with all other agencies having jurisdiction or special expertise in the matter, and public participation.[67]

B. the petition gave greatest significance to the guidelines' definition of the term "project":

> "Project" includes any major work segment involving siting, land purchases, design, or construction activities, utilizing state or federal funds carried out by any or all levels of government, which could have a significant effect on the environment of the state.[68]

This "extraordinarily restricted definition," the petition said, "effectively guts" CEQA. First of all, the Attorney General noted, the word "major" was not included in CEQA's description of projects covered by the EIR requirement (although it was used in NEPA). "Minor projects may significantly affect the environment. A segment of a highway may be minor, but the sum of such segments significant."[69]

But more important, the Attorney General saw the act as extending not only to activities undertaken directly by governmental agencies, but also to private activities permitted or funded by State or local government. The petition argued that since CEQA was modeled after NEPA, both NEPA and the NEPA guidelines must be seen as part of the legislative history of CEQA. The term "project" in CEQA was equivalent to the term "action" in NEPA, it said, and the Federal guidelines included private activities within the definition of "action."[70] The Attorney General offered his own definition of "project":

> Project includes activities:
>
> (a) Directly undertaken by state or local governmental agencies;
> (b) Supported in whole or in part through state or local public agency contracts, grants, subsidies, loans or other forms of funding assistance;
> (c) Involving a state or local governmental agency lease, permit, license, certificate or other entitlement for use.[71]

Caught between the conflicting demands of development-oriented interests, the environmentalists, and the Attorney General, the Resources Agency was faced with coming up with a new set of guidelines. CEQA's first anniversary went by in November 1971 without any implementing guidelines. Some State and local agencies had begun to develop their own procedures for EIRs,[72] but on the whole the requirement was ignored.

On January 28, 1972, Assemblywoman March K. Fong, Chairman of the Assembly Committee on Environmental Quality (successor to the Select Committee on Environmental Quality, which had drafted CEQA), sent a letter to the Governor asking when the guidelines might be released. No reply was received to that inquiry. On May 2, the Assembly committee invited representatives of the Administration to appear before it to explain the status of the guidelines.[73] On May 5, the Administration released a new draft.

## THE 1972 DRAFT GUIDELINES

The May 1972 "interim guidelines" had been prepared by the Resources Agency, but were circulated by OPR.[74] Like the June 1971 guidelines, they were merely a draft and had no legal effect; they were issued "for review only -- subject to revision prior to adoption."[75] The cover letter stated that comments would be welcome during a 30-day review period, after which a revised set of guidelines would be adopted by the Secretary for Resources "following Cabinet approval."[76]

The new guidelines were more detailed than the 1971 document, and satisfied some of the objections raised by the Attorney General and the environmentalists. For example, the definition of an EIR as an informational document was omitted.[77] To alert the public and agencies that an EIR was available for review, a twice-monthly California Environmental Monitor would be issued.[78] However, the new document still failed to give any guidance to local agencies on preparing EIRs. Its definition of "project" omitted the word "major," but still did not include private sector activities permitted or funded by government.[79]

On May 12, the Fong Committee held a "special hearing" to review the new proposed guidelines. Formal testimony was received from representatives of the Resources Agency, the Office of Planning and Research, the Attorney General, the Sierra Club, and the Environmental Defense Fund.[80] The committee came to many of the same conclusions that the Attorney General had arrived at with respect to the 1971 guidelines. Its report recommended, among other things, that the guidelines define "project" in the way suggested in the Attorney General's 1971 petition, and that the guidelines "should be made to apply to local government in order to assure uniform objectives, criteria, and procedures."[81]

## ENTER THE LEGISLATURE AND THE COURTS

Meanwhile, how CEQA was to be implemented became a judicial and a legislative issue (and, in fact, definitive guidelines for the law as it was enacted in 1970 were never issued).

In July 1972, Assemblyman John T. Knox (who, as chairman of the Local Government Committee of the lower house, had been a member of the select committee that drafted CEQA) introduced a bill to obviate some of the most important problems raised by the draft guidelines and their critics. His bill, AB 889, drafted primarily by the Attorney General's Office, defined the term "project" to include agency approval of private development projects (this was stated to be declaratory of existing law).

In addition, AB 889, as introduced in July, required local governments to prepare an EIR irrespective of whether they had made a finding that a project was consistent with a conservation element of a general plan. A discussion of the "growth-inducing" effects of a project was added to the required elements of the EIR. The phrase "significant effect" was defined to "make clear that the cumulative effect of minor projects" had to be considered. The Secretary for Resources was to issue guidelines within 180 days of the adjournment of the 1972 Legislature. AB 889 was passed by the Assembly, but was assigned in the Senate to a committee where, according to an environmentalist observer, it had little likelihood of being approved, since a majority of its members opposed the application of CEQA to private projects.[82]

Several other bills were introduced early in the 1972 legislative session to strengthen or clarify CEQA.[83] However, the only measure to be enacted was AB 301, which made clear that CEQA's requirement that local governments prepare EIRs applied to special districts, as well as cities and counties.[84]

The summer of 1972 also saw the first major court decisions under CEQA. In Keith v. Volpe,[85] the plaintiffs, who included the Sierra Club, the Environmental Defense Fund, and the National Association for the Advancement of Colored People, asked the U.S. District Court to stop Federal and State highway agencies from continuing work on the Century Freeway in Los Angeles County until the environmental impact requirements of both NEPA and CEQA had been complied with. The main issue in the case was whether the project was far enough along at the time the statutes went into effect as to excuse the agencies from preparing environmental impact assessments. The court ruled in favor of the plaintiffs.[86]

In Environmental Defense Fund, Inc. v. Coastside County Water District[87] (in which the State Attorney General joined the lawsuit on behalf of plaintiffs), a State Court of Appeal set important precedents by ruling on the adequacy of an EIR. The trial court had enjoined a water storage and supply project until the water district prepared an EIR and submitted it to the local planning agency, as required by CEQA. The district then submitted an impact report to the county planning commission, which found it acceptable. The plaintiffs argued that the contents of the EIR did not comply with CEQA, but the trial court lifted its injunction, believing that it was not within its authority to consider the adequacy of an EIR.

The appellate court, citing NEPA case law as precedent, affirmed the duty of the courts to review the content of an EIR, and directed the water district to prepare a new impact report. The EDF v. Coastside ruling established the right of citizens to sue under CEQA, established that it was possible to obtain an injunction under the act, and -- perhaps most important -- established that NEPA and NEPA case law were relevant to interpreting CEQA.[88]

In both of these cases, the courts took a broad view of CEQA; their decisions strengthened the role of the EIR. But in the meantime, the stage was being set for a court ruling that would have a far greater impact.

## SECTION VII

## THE "FRIENDS OF MAMMOTH" DECISION

### THE DECISION

The decision of the California Supreme Court in the Friends of Mammoth v. Board of Supervisors of Mono County case[89] is one of the most discussed rulings in environmental law. Details of the case have been described adequately elsewhere;[90] the basics are as follows.

In April 1971, International Recreation, Ltd., filed a request with the planning commission of Mono County (pop. 4,016) for a permit to build a 184-unit condominium complex in the village of Mammoth Lakes, a resort community located at the base of Mammoth Mountain, an important ski area on the eastern side of the Sierra Nevada. The commission granted the permit. A few property owners appealed the decision to the County Board of Supervisors which, after holding the required hearing, upheld the planning commission.

On July 12, the Friends of Mammoth, a property-owners' association made up mainly of absentee landlords from the Los Angeles area, asked the State Court of Appeal to overrule the Board of Supervisors, asserting among other things that CEQA applied to private activities permitted by government, as well as projects directly undertaken by governmental agencies, and that no EIR had been prepared before the condominiums had been approved. They were turned down. After more legal maneuvering and further defeats, the counsel for the Friends of Mammoth, Claremont attorney John McCarthy (who owned property at Mammoth Lakes) decided to ask the California Supreme Court to take direct jurisdiction and decide the case on its merits.[91]

On January 13, 1972, the Supreme Court granted the petition for a hearing and stayed all activities of the developer. Intent on proving its point that the term "project" in CEQA included State or local governmental permission of private activity, the State Attorney General filed an amicus curiae brief in support of the plaintiffs.[92] The Center for Law in the Public Interest, a Los Angeles-based nonprofit public interest law firm, also filed an amicus brief on behalf of the Sierra Club.

On September 21, 1972, the Supreme Court of California handed down its landmark opinion in Friends of Mammoth: that CEQA did indeed apply to private activities. In a 6-1 decision written by Justice

Stanley Mosk,[93] the court held that an impact report was mandatory before a governmental entity could act either for itself or in approving private projects:

> These reports compel state and local agencies to consider the possible adverse consequences to the environment of the proposed activity and to record such impact in writing. In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act cannot be understated.[94]

The court gave a detailed analysis of the legislative history and the intent to protect the environment in the act in reaching the conclusion that CEQA be given a broad construction. A review of the act's policy statement, read in conjunction with other sections of the act, showed, according to the court, that the Legislature intended to include private activities.

The court observed that NEPA, which went into effect some eight months before CEQA, was used as a pattern for the California law. Noting that the key provision in both acts, the environmental impact statement or report, was the same, the Supreme Court observed that the Federal guidelines would have required an impact statement under similar circumstances.

Finally, after noting that the term "project" was not defined in CEQA, the court rejected the defendant's contention that "project" applied only to public works projects. Instead, the court held that a minimal link between the government and the proposed project was enough to require an impact report. Such a link, the court said, could be "either by direct interest or by permitting, recommending, or funding private activities." The Mono County Board of Supervisors was ordered to set aside the building permit that it had issued to International Recreation, Ltd.

## REACTION TO "FRIENDS OF MAMMOTH"

The Mammoth decision caused an immediate and widespread controversy. Private projects subject to State or local governmental permission would now require an environmental impact report if they could have a significant effect on the environment. The ruling appeared to take effect immediately. But what about developments where construction had been started, permits had been issued, or financing had been arranged? What about the thousands of projects that had been approved without an EIR since CEQA went into effect in November 1970? Further, just what was a "significant effect"? The court, in its *Mammoth* opinion, seemed to equate "significant" with "nontrivial."[95] This appeared to describe a great many governmental actions which before then had been handled in a routine fashion, such as the issuance of building permits.

The construction industry, the building trade unions, and the financial community reacted with surprise and alarm at the ruling, claiming that the survival of the building industry and the economic well-being of the whole State had been put in jeopardy. The chairman of the construction industry committee of the Los Angeles Area Chamber of Commerce, for example, predicted that,

> there will be 100,000 people out of work [in Los Angeles County] within 30 days if something is not done... [Implementation of CEQA should be deferred] until the true intent of the act is clarified and until we can strike some semblance of balance between the job of protecting the ecology and protecting people's jobs. Nobody has defined what the environment is or what the report [the EIR] is, so we should have some delay or we're going to have a vast economic problem.[96]

The head of a subsidiary of Levitt & Sons, Inc., a major housing producer, said that because California's law went far beyond those of other States his firm might shift its operations elsewhere. An official of Pardee Construction Co., a division of Weyerhauser Co., said his company was considering expanding its business in Las Vegas, rather than in California, as a result of the *Mammoth* ruling. (A somewhat different opinion was given by a vice president of Kaufman & Broad, one of the State's largest homebuilders, who pointed out that the decision would be beneficial in the long run, since it would tend to penalize only the "fast-buck" operators who were able to undersell responsible housing producers under the old rules; under the *Mammoth* ruling, all builders would be in the same position.[97])

On October 6, in Governor Reagan's absence, Lieutenant Governor Ed Reinecke called an emergency session of the Cabinet to discuss the "potentially disastrous effect [the *Mammoth* ruling] is having on California.":

> I am extremely concerned that the plain language in the law had been ignored by the court. The Legislature and the Governor did not intend for the law to bring California's construction industry to a grinding halt, forcing thousands of workers off their jobs by stopping hundreds of construction projects. At the time [CEQA] was approved, everyone agreed that it applied only to governmental projects. The court's ruling has broadened the law far beyond any reasonable interpretaion of the statute.[98]

The Governor said on October 12 that he would order a special session of the Legislature if it became necessary to avoid letting "the construction industry and the economy be wrecked."[99] A few days later, the Lieutenant Governor called a special meeting of representatives of State agencies, organized labor, and the construction, agriculture, real estate, and lending industries to discuss "possible courses of action aimed at achieving both interim and permanent solutions to the problem."[100]

Much of the developers' concern was over statements that banks were holding up construction loans pending clarification of or compliance with the court's decision. Lieutenant Governor Reinecke said, after his meeting with industry representatives on October 18, that about $500 million in such loans was being withheld. However, a spokesman for Bank of America, the State's biggest bank, said he was "mystified" at how the Lieutenant Governor came up with such a figure. Most major banks reported that they were continuing to grant loans when they were satisfied that firms had complied with the law.[101] The Chairman of the Orange County Board of Supervisors, who was also vice president of a savings and loan association, declared that if a builder could not find financing for a project, "send him to me."[102] It was reported later, in fact, that there had been a record number of construction starts in California during October and November.[103]

Since few private projects require State approval, local governments, rather than State agencies, were most affected by the Mammoth ruling. In the absence of definitive State CEQA guidelines, few local governments had instituted EIR procedures even for public projects. Cities and counties were ill-prepared to begin writing and processing EIRs, and there was much confusion over what should be done to comply with the decision. Likening the Mammoth ruling to the U.S. Supreme Court opinions on reapportionment and school integration, the executive director of the League of California Cities, Richard Carpenter, said,

> I can't think of any other decision that will have a more far-reaching effect on the operation of cities than this one. It is a major change not contemplated by those affected and the details are left for future decisions.[104]

Local governments reacted in different ways in the first week after the Supreme Court ruling. Some of them, including Los Angeles County, simply stopped issuing building permits pending clarification of the decision.[105] Some required applicants to sign a "disclaimer" releasing them from liability should a permit later be held invalid under CEQA. Other jurisdictions proceeded cautiously: "We are trying to use our best judgment and psych out what Justice Mosk meant," the Newport Beach City Attorney stated.[106] Aside from the questions of when an EIR should be prepared, what it should contain, and whether the court decision was retroactive, cities and counties were also concerned about where funding and staff to handle the EIR workload would come from, and whether private consultants could be hired to write the reports.[107]

Still, it appeared that the majority of local officials were not unalterably opposed to the Mammoth ruling. This was brought out at a special hearing of the Assembly Committee on Local Government held in conjunction with the annual convention of the League of California Cities in Anaheim. The Sacramento Bee reported that, "Virtually all of the municipal representatives who spoke at the hearing conceded they could live with the basic finding of the ruling: that environmental impact reports are required for private construction projects," though it was clear they needed guidelines and clarification.

The Sacramento City Attorney, whose office had already put forward a proposed ordinance on EIR procedures, urged the committee to "design enough flexibility into its revisions of [CEQA] to permit the cities to draft procedures which are workable for each city individually." Representatives of the real estate, banking, and building interests also appeared and, as before, spelled out warnings of "impending disaster."[108]

The Attorney General, who had favored CEQA's application to private projects all along, also appeared at the Anaheim hearing, where he greeted the Mammoth decision as "a landmark in environmental law," and declared that much of the controversy surrounding the decision was "unnecessary and in many instances the result of manufactured hysteria."[109] In contrast to the flurry of press releases issued elsewhere, his environment unit had moved quickly after Mammoth to prepare and distribute a "checklist" for implementation of CEQA, directed primarily at local agencies. This document stated that it was

> intended to provide immediate guidance. It is not intended to preempt the functions of the Office of Planning and Research, which is charged with adopting guidelines. However, until guidelines in conformity with [CEQA] are adopted, local governments are faced with real and immediate problems...[110]

The "checklist," actually a fairly lengthy compilation of some 90 pages, drew heavily on the federal guidelines under NEPA which, it stated, "provide excellent guidance."[111] For several months, the "checklist" would be the only formal guide public agencies had to CEQA as it was interpreted by the Mammoth decision.

The Supreme Court handed down its ruling only six weeks before a general election in which land use was already a major issue. Environmentalists had placed an initiative measure on the ballot -- Proposition 20 -- to enact a Coastal Zone Conservation Act creating a system of commissions with permit powers and planning responsibilities in California's 900-mile-long coastal zone. Proposition 20 was strongly opposed by development interests and many local governments in the affected area, as well as the Reagan Administration.[112] Nearly $1 million would be spent by its opponents for a massive advertising effort in which loss of jobs due to "environmental extremism" was a major theme.[113] The alleged economic impact of the Mammoth decision was pointed to as an example of the chaos such "extremism" could create. "The confusion has been seized upon by those who would like to free private development from all environmental restraints," the Los Angeles Times commented editorially, "and they are proposing that the Legislature resolve the problem by throwing out [CEQA].[114]

# SECTION VIII

## CEQA IS AMENDED

### THE COURT CLARIFIES "MAMMOTH"

Matters rapidly came to a head in the month of November 1972. On November 6, the Supreme Court issued a modification to the Friends of Mammoth decision.[115] Earlier, at the request of the Governor, the Attorney General had asked the court to modify its ruling so that it would not apply retroactively, and so that it would not go into effect until 61 days after the adjournment of the Legislature. Mono County officials and the private developer directly involved in the Mammoth case had sought a rehearing on the whole question of CEQA's application to private activities.[116] The court refused to reconsider its September 21 decision that CEQA applied to private projects, refused to limit its ruling to projects filed after the decision was final, and also declined to delay the effective date of its ruling.

While it left the original Mammoth decision unchanged, the court issued a brief addition to its opinion emphasizing that an environmental impact report was required by CEQA only for a project which may have a "significant effect" on the environment. Stressing that this qualification must not be used as a subterfuge to avoid making EIRs, the court went on to explain that

> [C]ommon sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope -- e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business -- and hence, in the absence of unusual circumstances, have little or no effect on the public environment. Such projects, accordingly, may be approved exactly as before the enactment of [CEQA].[117]

In refusing to limit its ruling to future projects only, the court pointed out that very few, if any, of the projects previously approved without an impact report would still be subject to attack. This, the court said, was because most counties had short time limits for challenging the granting of a building permit.

Finally, the court declined to delay the effective date of its ruling to allow more time for governmental agencies to develop procedures and guidelines for applying CEQA to private projects. Such agencies, the court explained, had been charged with administering the law for almost two years and "can now draw upon their planning and experience in the public sector to aid in solving whatever problems they may have in the private sector." However, the court added, "To the extent such planning and experience prove inadequate to the task at hand, we do not doubt that with the good will and cooperation of all concerned appropriate new guidelines and procedures can be promptly devised."

The court concluded that

> [I]f some delays nevertheless ensue in processing applications for certain projects which threaten to have a significant effect on the environment, it should be remembered that such delays are implicit in the Legislature's primary decision to require preparation of a written, detailed environmental impact report in precisely those cases.[118]

## THE LEGISLATURE ACTS

The Supreme Court announced its final decision on Monday, November 6. Tuesday was election day. Proposition 20, the coastal initiative, passed by 55.1%. The vote demonstrated the degree of public concern over misuse of the land. It thus undoubtedly added weight to environmentalist positions in the subsequent legislative maneuvering over the fate of CEQA.

On the day after the election, the Legislature reconvened after a campaign recess, and the focus of the CEQA controversy shifted to the halls and hearing rooms of the State Capitol. Legislators, who had already been under pressure before the election, now found themselves besieged with requests from numerous cities and counties, as well as groups representing development interests, to modify -- or at least to delay -- the effect of CEQA as it had been interpreted by the Supreme Court. Surprisingly, no bill was introduced to repeal CEQA as a whole,[119] and few organized groups came out publicly for repeal. Even the powerful California Builders Council, representing the State's home builders' and construction associations, did not come out formally for abolishing the EIR requirement entirely, although the council's lobbyist said he personally favored repeal.[120] Nonetheless, environmentalists clearly were on the defensive.

Although several bills were introduced to amend CEQA, the attention of developers and environmentalists alike soon concentrated on Assembly Bill 889. This was the measure (discussed above[121]) that had been drafted by the Attorney General's office and introduced back in July by Assemblyman John Knox, the chairman of the lower house Committee on Local Government. As passed by the Assembly, AB 889 would have strengthened CEQA in a number of ways, including the addition of a declaration that the law applied to private projects. At the time of the Mammoth decision, the bill was languishing in the Senate Committee on Governmental Organization, where it had little chance of being approved. AB 889 was now seized upon by all sides of the controversy as the means of clarifying CEQA and/or lessening the impact of the court's interpretation.[122]

Press reports indicated that development-oriented interests, including builders, lenders, and labor leaders, were in general agreement in seeking validation of completed and ongoing projects, and in asking for a delay in implementing the Mammoth decision. Local governments wanted clarification of the terms used in the act, such as "significant effect" and "environment," but most of all, like the developers, they wanted a moratorium to give them time to develop procedures for handling EIRs.

Environmental organizations and the Attorney General, on the other hand, wished to preserve the broad effect of the Mammoth ruling, but realized that some compromises would be necessary in order to preserve CEQA in any form at all. The leading role in the environmentalists' effort was taken by the Sierra Club. The Planning and Conservation League also played an important role.

In mid-November, after hearing the views of all sides, Assemblyman Knox amended AB 889. The provision defining "significant effect," which made clear that the cumulative effect of minor projects had to be considered in an EIR, was deleted, as was the requirement that public agencies with special expertise be consulted by the agency preparing an EIR. Other amendments included the definition of an EIR as an "informational document," the retroactive exemption of past private and some public projects, and the imposition of a 120-day moratorium for all private projects. The Secretary for Resources would be authorized to exempt certain classes of projects from the act. Also, all "non-discretionary projects," expressly including all building and grading permits, would be permanently exempted from the EIR requirement.[123]

The Sacramento Bee, in an editorial published November 22, said it feared that

> the amendments would go so far as to make [CEQA] inoperable and therefore ineffective. Not only would this thwart the ruling of the Supreme Court, it would go against the mood of the public -- which is in favor of more governmental action in making certain the environment is protected.
>
> Results of the recent election demonstrated this public concern. What should be remembered is the purpose of the environmental law is not to stop growth but to challenge it into sensible development. The lawmakers should avoid approving any legislation under the guise of implementing the law which would take the state backward instead of forward.[124]

The amended version of AB 889 was vigorously attacked by environmental groups. Sierra Club attorney Richard Gutting said the bill would reduce CEQA to a "mere skeleton" because most private development would be excluded under its exemption for building and grading permits and other provisions.[125] The 120-day moratorium was also criticized. John McCarthy, the attorney for the Friends of Mammoth organization, noted that the measure would enable developers to resume plans for building the condominium complex that was the original issue acted upon by the Supreme Court in the Mammoth case. California would find itself with a gap in building controls similar to "the gold rush," McCarthy complained. "And within the 120-day moratorium called for in the bill they can use the cheapest, schlockiest approaches to land use."[126]

The environmentalists mounted an extensive grass-roots campaign "to save CEQA." Some legislators received hundreds of telephone calls. All of the members of the Legislature received numerous letters and telegrams. Trained volunteer groups of up to 30 people lobbied legislators daily during the latter part of November. Position papers and arguments were distributed in the Capitol. Other civic groups and homeowners' organizations joined in the effort.[127]

In late November, after a great deal of political maneuvering, and with the end of the 1972 legislative session fast approaching, Assemblyman Knox, the Attorney General's office, and groups representing the building industry, financial institutions, labor, and environmentalists went into intensive negotiations in an effort to agree on a compromise bill. They were successful. The final version of AB 889 passed both houses of the Legislature on the final day of the session. It was signed by Acting Governor Reinecke on December 5, and took effect immediately.[128]

## AMENDED CEQA

The California Environmental Quality Act as amended by AB 889 was a true compromise: it was acceptable to most everyone, but not really satisfactory to anyone. It was also much more complex and detailed than the 1970 law, though the declaration of findings and policy was left intact (see Appendix A for the full text of the amended act).[129] AB 889 made the following major changes in CEQA:

1. Private projects. The most important change in CEQA related to its application to private projects. "Project" was defined as:

    (a) Activities directly undertaken by any public agency.

    (b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

    (c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.[130]

"Person" included businesses and other organizations, as well as State and local agencies.[131]

2. Moratorium. AB 889 established a 120-day moratorium on CEQA's application to private projects. However, public agencies were given the option of requiring EIRs for such projects despite the moratorium (and many did so).[132] The moratorium expired April 4, 1973.

3. Grandfather clause. AB 889 validated all private projects which had been approved prior to the effective date of the bill (December 5, 1972), with the exception of projects which had become the subject of litigation, unless "substantial construction had occurred."[133] Thus, among other things, the grandfather clause would not apply to the now-famous condominium at Mammoth Lakes, a project which had taken on much symbolic, as well as real, meaning for environmentalists.

4. "Environment." The term "environment" was defined as meaning "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance."[134]

5. "Significant effect." The troublesome term "significant effect" was defined to include, at minimum, any of the following conditions:

> (a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals;
>
> (b) The possible effects of a project are individually limited but cumulatively considerable;
>
> (c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.[135]

6. EIR an informational document. An environmental impact report was defined as an "informational document" the purpose of which is to

> provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized and to suggest alternatives to such a project.[136]

When such a definition was first suggested, environmentalists strongly opposed it, believing that a public agency could ignore an adverse EIR and approve a bad project anyway, without fear of a lawsuit under CEQA. However, various sections of the act were changed, according to environmentalists, to provide that it is an abuse of discretion for an agency to fail to follow the recommendations of an EIR.[137]

7. Deadlines for guidelines. One of the weakest provisions of the 1970 act, calling for the Office of Planning and Research to "coordinate the development" of EIR guidelines, was given teeth. AB 889 specified that OPR "shall prepare" guidelines and transmit them to the Secretary for Resources, who was required to "certify and adopt" them within 60 days of the effective date of the bill,[138] and provide for their "timely distribution to all public agencies."[139] In addition, all State and local agencies were required to adopt their own "objectives, criteria and procedures" for EIRs no later than 60 days after the

Resources Agency adopted the general guidelines.[140]

8. Growth-inducing effects. AB 889 added a significant new item to the list of topics that must be covered in an EIR: a discussion of the "growth-inducing impact of the proposed action."[141] This addition was proposed by environmentalists and the Attorney General's office. Deputy Attorney General Nicholas Yost has described the reasoning behind it:

> The whole concept embodied in this requirement...is surely one of the lessons repeatedly learned in this time of environmental awareness. Not only does a highway or an airport cause certain environmental disruptions incident to its construction and not only do the automobiles or aircraft which use it cause certain air and noise pollution consequences, but the facility itself fosters population growth and resultant land use changes...these secondary consequences of a facility may be the most profound ones.[142]

9. Public notice. State agencies that approve a project subject to CEQA were now required to file a notice of such approval with the Resources Agency.[143] Local agencies that approve a project subject to the act were required to file a similar notice with the county clerk.[144]

10. Fees. Explicit authorization was given to State and local agencies to collect a reasonable fee from a developer to offset the cost of preparing an EIR.[145]

11. Judicial review. AB 889 set forth fairly detailed procedures for court review of actions taken by public agencies that are challenged on the ground of noncompliance with CEQA. These were stated to be declaratory of existing law.[146]

12. Conservation element exception. CEQA as enacted in 1970 exempted local governments which had adopted a conservation element of a general plan from preparing EIRs; they had only to "make a finding" that any project subject to CEQA was "in accord" with the conservation element. AB 889 did away with this provision, which environmentalists and many officials considered to be an illogical loophole.[147]

13. Coastal commissions protected. AB 889 specifically stated that no provision of CEQA could restrict the authority of the new Coastal

Zone Conservation Commissions.[148] This clause was designed by environmentalists to thwart what they perceived to be an effort to emasculate Proposition 20. The amended act gave the Resources Agency authority to exempt certain classes of projects from the EIR requirement,[149] and all public agencies were directed to conform their rules, regulations, and policies for evaluation of projects with the provisions of CEQA.[150] This created the possibility that a project subject to the scrutiny of a coastal commission could be deemed exempt from Proposition 20 because of a prior ruling by the Resources Agency that such a project did not have an adverse effect on the environment.[151]

14. Exemptions. AB 889 provided for a number of significant exemptions from the EIR requirement. The guidelines issued by the Resources Agency were to include a list of "classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of [CEQA]."[152] (These are termed "categorical exemptions.) "Emergency repairs to public service facilities necessary to maintain service"[153] and projects undertaken to alleviate disaster[154] were specifically exempted in the law, as were "ministerial projects."[155] In law, "ministerial" acts -- as opposed to discretionary acts -- are actions in "which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done."[156] AB 889 included within its definition of discretionary projects "the enactment and amendment of zoning ordinances, the issuance of conditional use permits and the approval of subdivision maps" (except in specified cases).[157]

From the standpoint of the environmentalists and their allies, AB 889 was a victory in the long run in that it confirmed CEQA's application to private projects; limited the moratorium to 120 days, rather than the six months or indefinite period that had been proposed by some groups (though even 120 days was thought to be too long); and formulated stronger standards and judicial review procedures for EIRs. The bill also served to accomplish a number of other environmentalist aims: the protection of existing lawsuits under CEQA (including the symbolically important Mammoth case), guarantees of public notice and participation, protection of the coastal zone act, modification of the definition of the EIR as an "informational" document, firm deadlines for the issuance of guidelines, removal of the conservation element loophole, and the addition of the "growth inducing effects" item to the list of matters to be discussed in an EIR.

From the standpoint of the development interests, AB 889 was a victory in the short run in that it validated private projects which had been approved before the bill went into effect (with only a handful of exceptions) and provided a 120-day moratorium in which they could gear up to comply with an unfamiliar procedure. Developers were also pleased with the rather narrow definition of "environment" (limited to "physical conditions"[158]), as well as the various project exemptions allowed in the new law.

From the viewpoint of local governments, AB 889 was a success because it allowed time to develop necessary procedures to comply with CEQA. Cities and counties also welcomed the explicit provision that they could charge fees from developers to cover the cost of preparing EIRs.[159]

## SECTION IX

## FLESHING OUT THE ACT

The amended version of CEQA was a compromise reached in the heat of controversy during the final, hectic days of one of the longest legislative sessions in California's history. AB 889 still left many questions unanswered, questions that would have to be addressed in the guidelines, which the law said must be issued by the Resources Agency by early 1973. The debate over CEQA and how it should be implemented now shifted away from the Legislature, and again to the Executive Branch and the courts.

### THE FEBRUARY 1973 GUIDELINES

The Secretary for Resources issued a draft set of guidelines on December 19, only two weeks after AB 889 was signed into law.[160] Hearings were held on January 30. As they did in the cases of the 1971 and 1972 draft guidelines, the Attorney General's office and the Sierra Club took the major roles in criticizing the document.

In a detailed, 40-page statement,[161] Deputy Attorney General Louise Renne said the Resources Agency had made a "genuine effort" to meet both the letter and spirit of the law. However, she said, many revisions were required "if the guidelines adopted are to be fully in accord with [CEQA]." [162] Among the numerous specific changes suggested by the Attorney General's office were stronger provisions for public participation ("the guidelines proposed fail to provide any means by which the public can effectively provide input" [163]), removal of what was felt to be an implication that a public agency could simply adopt an EIR submitted by a developer without "independent investigation and analysis," [164] and inclusion of general plan enactment or amendment within the definition of the term "project." [165] The Attorney General also objected to various items in the proposed list of categorical exemptions from the EIR requirement, for example, sidewalk repairs:

> We understand that "sidewalk repair" has been used as an excuse for chopping down large numbers of trees. We therefore suggest adding after "sidewalk" the following "(not involving the cutting down of trees)."[166]

In addition, the Attorney General argued that the guidelines' definition of "significant effect" should include "beneficial" as well as "detrimental" effects (this had become an important issue at the Federal level with respect to NEPA), that more detailed procedures should be given for the processing of EIRs,[167] and that the "policy" section of the guidelines[168] distorted the meaning of the act.[169]

The Sierra Club's statement[170] covered many of the main issues raised by the Attorney General, but in some cases with rather different recommendations. While it said that the proposed guidelines represented "a step forward in aiding State and local agencies to implement the letter and spirit of CEQA," it emphasized that more specific provisions for public participation should be included. The club also criticized the proposed definition of "emergency project" (a point not discussed by the Attorney General), which it said should not arise upon the "unsupported 'claim' of the sponsor of a project," but rather upon the formal declaration of an emergency.

The Los Angeles Times commented on the draft guidelines in an editorial:

> No one is entirely happy with [them]. But they provide a reasonable starting point for discussions and are in line with the common-sense approach called for by the California Supreme Court in holding that such impact reports must be filed on private as well as public projects. And they represent an improvement over prior interim guidelines that had been roundly criticized by the attorney general's environmental protection unit...
>
> Some developers believe that the category of exemptions is too narrow. Conservationists, on the other hand, note that some language in the guidelines appears to conflict with specific provisions of [CEQA] and might tend to weaken the effect of the high court's decision in the Friends of Mammoth case...
>
> A workable compromise must be achieved quickly to end confusion over the scope of the high court decision and the Environmental Quality Act itself.[171]

On February 5, 1973 -- less than a week after the hearings, and just two months after AB 889 was enacted -- the Secretary for Resources issued the first definitive guidelines for implementation of CEQA.[172] Like AB 889, the guidelines were a compromise. Some of the suggestions offered by the Attorney General and by the environmentalists were adopted. Likewise, some provisions supported by development interests were incorporated, including various exemptions from the

EIR requirement.

The environmentalists were critical of a number of provisions in the final guidelines, but particularly those that dealt with public participation, the definition of "significant effect," and categorical exemptions. In his weekly newsletter, Sierra Club Sacramento lobbyist John Zierold wrote:

> We may have struck it rich on Mammoth, but OPR [the agency held responsible for preparing the guidelines under CEQA] has discovered a bit of political alchemy that is transmuting our gold back into base metal. They've worked their magic through an arcane process called "categorical exemptions"...
>
> There are exceptions to inch-forward bureaucracies, notably the Resources Agency. It customarily hums with the brisk diligence of dedicated functionaries. This was particularly evident last month as the final CEQA guidelines were being put together. But when it came to categorical exemptions, the melodious hum of objectivity took on the distinct whine of a chain saw, as the final score clearly reads.[173]

Secretary for Resources Livermore conceded that the document "may have some rough edges."[174] He said he would amend the guidelines in August, based on any criticism he received.[175]

Some members of the environmental movement would not wait. On June 29, the Center for Law in the Public Interest, a Los Angeles-based public interest law firm, filed a petition on behalf of itself and the League of Women Voters of California seeking a judicial declaration that the guidelines did not comply with CEQA.[176] The major points in the center's petition were that:

1. The CEQA guidelines were legally invalid in many "crucial" respects:

-- Regarding "negative declarations," the guidelines were invalid because they did not require that such declarations include the reasons for a determination that a project would not have a "significant effect."[177]

-- Regarding "categorical exemptions," the guidelines were invalid because they were "overly broad" and because the procedures used in adopting them were inadequate.[178]

-- Regarding public agency responsibility in the EIR process, the provision permitting an applicant to prepare his own EIR was invalid: "The agency itself must make its own independent investigation and research."[179]

-- Regarding the guidelines' provisions for preparation of EIRs, the use of a single EIR to describe more than one project was invalid without a determination that alternatives and mitigation effects "are also 'similar enough to warrant the same treatment in an EIR.'"[180]

2. The CEQA guidelines ignored the issue of whether CEQA imposes a duty on agencies to prevent environmental damage.[181]

3. The provisions of the guidelines regarding preparation of EIRs for ongoing projects were invalid, since they went beyond the "period of grace" specified in CEQA.[182]

4. The provisions regarding determination of "significant effect" on the environment were invalid, because they restricted the term to "substantial adverse impact," "actual" impacts, and other narrow definitions of the phrase.[183]

5. The provisions regarding public participation in the EIR process were invalid, because they were too restrictive and "downgraded" the basic requirements of the act to "mere horatory [sic] admonitions."[184]

The Resources Agency's response to the center's suit was based on jurisdictional grounds. The Agency's attorneys argued that the petitioners had an adequate remedy available in the ordinary course of law, and that they had not exhausted their administrative remedies. They also argued that the Legislature had vested broad discretionary powers in the Secretary for Resources to be exercised in the light of complex factual considerations.[185]

On August 16, 1973, the Supreme Court denied the center's petition; a similar request to the State Court of Appeal was dismissed in October.[186] While the center failed in its effort to obtain a judicial remedy, the Center for Law in the Public Interest v. Livermore case reaffirmed the willingness of the environmentalists to go to court, if necessary, to assert their broad interpretation of CEQA.

## AMENDMENT OF THE GUIDELINES

As promised, the Secretary for Resources prepared proposed amendments to the CEQA guidelines in August 1973.[187] They were circulated widely among State agencies, local governments, citizens' groups, and business and industrial organizations. From the standpoint of understanding the development of CEQA, the specific amendments that were proposed are probably less interesting than the written comments the Resources Agency received in response to them. Many of these comments dealt with issues that were not covered in the proposed amendments. They might be summarized as follows:[188]

1. There was a need for a reviewable record to support an agency's determination, in a "negative declaration," that a project would not have a significant effect on the environment.

2. Public agencies should be allowed to charge fees of developers for any environmental evaluation activity, not just the preparation of an EIR.

3. A "non-lead agency," that is, an agency which is not primarily responsible for the preparation of an EIR, but which is concerned with the effects of a project, should be allowed to formally challenge the determination made by a "lead agency."

4. A transition period was needed for State and local agencies to bring their procedures into conformity with the amended guidelines.

Specific responses to the proposed amendments included these:

-- Standard Oil Company of California, the State's largest industrial corporation, asked that a clause excluding construction activities from a provision exempting actions of regulatory agencies "which are taken for the protection of the environment or natural resources" be eliminated. It cited several cases where the proposed regulations would "delay compliance with air and water pollution control regulations to the detriment of the environment," for example, a proposed bio-oxidation pilot plant at one of its producing installations which would be built to test a method for treating an effluent in order to meet State ocean discharge standards. "Preparation of an EIR in accordance with these Guidelines would result in considerable delay and preclude our staying on the schedule set by the State Water Resources Control Board," the company said.[189]

-- The State Department of Fish and Game objected to a proposed addition to the guidelines which would require agencies to weigh "other public objectives, including economic and social factors in determining whether and how a project should be approved," in addition to environmental damage. It argued that this would not be in keeping with the section of CEQA that states that "long-term protection of the environment shall be the guiding criterion in public decisions."[190]

-- The Sacramento County Board of Supervisors, by resolution, argued that a proposed amendment to the guidelines to set firm minimum review periods of 30 days, both for draft EIRs and final EIRs, was unreasonable (no minimum period had been set in the February 1973 guidelines). In an explanatory memorandum, the County said it believed "the proposed 30 day minimum review periods are based on several misconceptions: (a) that all local governmental agencies are attempting to 'hide' the EIR process from the public; (b) that equal amounts of time are required for review of Draft and Final EIRs; (c) that small-scale, privately-initiated projects require the same type of review as large-scale, publicly-initiated projects." It proposed shorter review periods for private projects and for final EIRs.[191]

Before the proposed amendments were issued, the Attorney General had sent the Secretary for Resources two lengthy memorandums on the February guidelines.[192] Among the Attorney General's main objections were that the list of categorical exemptions "appears to be unacceptable, as a matter of law."[193] While he noted that a number of the suggestions made by his office in January had not been taken (including the one relating to sidewalk repair), he said that all of his "earlier comments pale in comparison when the new list... is reviewed."[194] In particular, the Attorney General noted, two provisions appeared to "exempt virtually all actions taken by regulatory agencies throughout the State." For example, the first provision exempted from the EIR requirement

> actions taken by regulatory agencies, as authorized by state law or local ordinance, to assure the maintenance, restoration, or enhancement of natural resources, including but not limited to wildlife preservation.[195]

"Does this mean that the timber industry as one example is now categorically exempt from CEQA?", the memo asked. "It would appear so."[196] The Attorney General also disagreed with the guidelines' definitions of "ministerial projects" and "significant effect." He called for better means of involving the public in the EIR process, and for more "hard and fast" rules in the provisions dealing with the role of public participation.[197]

A number of other comments were received by the Resources Agency before the proposed amendments were issued, including an analysis of the guidelines by the Planning Directors Association of California[198] and a long letter from the Environmental Defense Fund and the Sierra

*Club.*[199]

The Planning Directors Association questioned the inclusion of a general plan program in the definition of "project," and asked for clearer definitions of terms such as "significant effect" and "growth inducing." "A building permit should be specifically and unequivocally included in the list of ministerial acts," it stated. The planning directors also asked for review of filing procedures for EIRs and negative declarations, and for removal of a requirement that an EIR be officially "adopted" by a public agency prior to acting on a project: "It is sufficient that the EIR be available in a completed form and recognized with other testimony relating to the action on the project." Significantly, the association asked that the State sponsor "a comprehensive program to assist and support public agencies in the implementation of CEQA and the [EIR] program."

> This program [the planning directors said] should include ... informational seminars periodically throughout the state to assist in developing consistency in the interpretation and administration of CEQA and EIR guidelines.
>
> A staff of professionals should be available to contact personally local agencies experiencing difficulty with interpretation or the application of the guidelines.
>
> A central office should be established where questions of interpretation may be directed from local agencies experiencing difficulty. The questions and responses should be catalogued and distributed periodically to all jurisdictions for their information and use.[200]

The Environmental Defense Fund and the Sierra Club stated that the guidelines were "improper and unlawful in the following respects:"

> 1. They fail to recognize the duty of public agencies to mitigate harm to the environment.
>
> 2. They improperly diminish the statutory standard of "significant impact" [sic] and thus unlawfully restrict the number of projects which will require environmental impact reports.
>
> 3. They fail to guarantee members of the public with a full and fair public hearing on projects having a significant impact on the environment.[201]

Their letter suggested changes in provisions relating to the definition of "significant effect" and "project," the use of a single EIR for several projects, and preparation of an EIR by an applicant ("the private proponent of a project [should not be allowed] to submit a draft EIR"). Greatest attention, however, was given to the question of public participation:

> A principal purpose of the Guidelines must be to encourage public participation in the CEQA process. The Guidelines must establish procedures which afford maximum access to that process. Guideline provisions which tend to limit or restrict such participation must be revised.[202]

Hearings were held on the proposed amendments to the guidelines in Los Angeles and Sacramento in October. In view of the controversy that had surrounded CEQA after the Mammoth decision a year before, attendance at the Los Angeles hearing was surprisingly sparse. About 50 people were at the hearing held on October 11 in the old State Building. Secretary Livermore presided. He noted that a court reporter had been asked to take down a transcript of the proceedings as a basis for court review, if it should become necessary. People were "waiting in the wings" to challenge the guidelines, he explained. But only five people spoke: two officials of the City of Los Angeles, a representative of the San Diego Region Comprehensive Planning Organization, a leader of a neighborhood citizens' group, and a city attorney.[203] Perhaps this was a sign that CEQA had become generally accepted.

The most telling comment at the Los Angeles hearing may have been the one made by the Senior Assistant City Attorney of Beverly Hills, Jack Allen:

> If you must make a different interpretation [of CEQA], make it in favor of the environment...not because I favor the environmentalists, but because it is more likely to be decided that way by the courts and less likely to be litigated.[204]

The Secretary for Resources issued amended CEQA guidelines on December 17, 1973[205] (see Appendix B). The most significant changes in the document were a requirement that negative declarations shall state the reasons for a conclusion that an EIR need not be prepared,[206] and an explicit provision that public agencies may use a draft EIR prepared by a developer only after giving the draft an independent evaluation.[207] In addition, the new guidelines permitted local agencies to combine an EIR on a general plan with the general plan document.[208] Public agencies were given two months to bring their procedures into conformity with the amended guidelines.[209]

A covering memo explained, however, that five major questions still remained unresolved in the guidelines:

1. The definition of significant effect.
2. The scope and record required for categorical exemptions.
3. Whether there is an overriding duty to prevent environmental damage.
4. Whether further provisions for public participation should be required.
5. Whether a developer may prepare his own draft EIR.

"Instead of delaying the Amendments," the Resources Agency said, "we decided to adopt the Amendments now and do additional work on the five remaining issues." Additional hearings would be scheduled "when we have formal proposals to discuss."[210]

## THE "CALIFORNIA EIR MONITOR"

In December 1973, the Resources Agency began publishing California EIR Monitor, a twice-monthly bulletin containing public notice of proposed amendments to the CEQA guidelines; a listing of draft EIRs completed in cities and counties throughout the State, compiled from notices of completion received in the Office of the Secretary for Resources; and a listing of EIRs and negative declarations received by the State Clearinghouse for State review. In addition, the Monitor includes comments by the Secretary on problems of implementing CEQA, and articles on various aspects of the EIR process.

California EIR Monitor is patterned after the 102 Monitor published by the Federal Council on Environmental Quality on environmental impact statements filed under NEPA. Like the 102 Monitor, it is distributed on a subscription basis.[211] By March 1974, some 400 public agencies, private organizations, and individuals had paid $20 to receive the California EIR Monitor.[212] When compared to the Federal experience, this is an impressive record. The Federal 102 Monitor began publication in February 1971. Initially, it was distributed without charge (later, a

$6 fee was required of non-government subscribers). By August 1971, 102 Monitor had only about 2,000 subscribers for a publication of national interest.[213]

The first eight issues of California EIR Monitor listed an average of about 155 draft EIRs completed in cities and counties. Here are two typical listings from the March 25, 1974 issue:

> Title: ERC 74/92/EIR: PZ 73-152
> Location: Kingsburg
> Description: Reclassification of a five acre parcel of land from the A-1 zone to the R-A-43 zone in order to change the existing zoning to one which will allow division of property into smaller parcels of land.
> Available from: Tulare County Planning Department, Courthouse, Room 107, Visalia, CA 93277
> Review period: 30 days from 3/18
> Contact: William Henry, 209-732-5511, ext. 341
>
> Title: Northridge Community Environmental Impact Report [part of the general plan program]
> Location: Los Angeles
> Description: The Plan is part of the General Plan to promote an arrangement of land use, circulation and services which will encourage and contribute to the economic, social and physical health, safety, welfare and convenience of the citizens of Northridge Community.
> Available from: City Department of Environmental Quality, Room 550, City Hall East, 200 N. Main St., Los Angeles 90012
> Review period: 3/18- 4/19/74
> Contact: Gary Morris, 213-485-5386

One of the major purposes of the Monitor is to inform concerned agencies and members of the public that a draft EIR is available for review and comment. However, in many cases, review periods are short. The State Guidelines say the review time "should" be at least 30 days and no longer than 90 days,[214] but 30-day deadlines are common, and some local governments specify periods as short as seven days. By the time local agencies have sent the information to Sacramento and it is compiled, typed, reproduced, mailed, and received and read by the ultimate user, the review periods for many of the projects listed have expired.[215]

Another problem with the listings of local draft EIRs in the Monitor is the question of their completeness. The Resources Agency has no way of knowing whether all of California's 466 cities and counties are complying with CEQA's provision that notices of all draft EIRs be sent to it, but a State official told us that it is suspected that more than a few local agencies are ignoring the requirement.

The Monitor also lists Federal environmental impact statements, EIRs, and negative declarations received for State review by the State Clearinghouse (a part of the Office of Planning and Research). In the first eight issues, an average of about 50 such documents were listed.

In addition to project listings, nearly every number of California EIR Monitor has included official announcements or other guidance on CEQA. Published in the first few issues of the Monitor were announcements about the amendments to the guidelines, a report on the Center for Law in the Public Interest lawsuit,[216] an index to the guidelines,[217] an 18-page article by two University of California professors on the processing of EIRs by county agencies,[218] an announcement about a television course on EIRs, a review of current litigation under CEQA,[219] and clarifications of various points in the act or in the guidelines. The California EIR Monitor promises to play an important role in furthering the purposes of the act by quickly disseminating current information to those directly concerned with its implementation.

## SECTION X

## MANAGEMENT OF CEQA-MANDATED PROCESSES

### IMPLEMENTATION IN STATE GOVERNMENT

Management of CEQA is hampered at the State level by the lack of a central staff with full-time responsibility for monitoring and fostering the development of EIR processes either within State agencies or at the local level. The Resources Agency has designated one staff official, a Special Assistant to the Secretary, to handle general CEQA policy matters in addition to his regular duties; his main CEQA responsibilities are the State guidelines and the California EIR Monitor.[220] There is no State office parallel to the Council on Environmental Quality at the Federal level which regularly consults with local administrators seeking aid in interpreting the act. Conversely, there is no continual updating of information to indicate what changes in the State guidelines would be most helpful at the working level in local government.

There is also no enforcement authority in the State Administration that can require compliance with the act. There are no sanctions for failure to file an EIR, nor for failure to implement an EIR management process. The regulations and procedures adopted by State agencies and local governments under CEQA are not reviewed. Enforcement of CEQA is made the responsibility of the political process and the judicial system. In effect, State and local agencies are allowed to evade the act if they so desire, and if they can avoid being challenged.[221]

A recent investigation of the implementation of CEQA by the Environmental Defense Fund found a number of shortcomings in State Government processes under the act. According to EDF:

-- There has been a widespread effort on the part of State agencies to exempt their programs from the EIR requirement. Categorical exemptions that had been granted by the Resources Agency were not supported by adequate findings, the report said.

-- Some agencies that approve projects having significant environmental impact had not yet adopted formal regulations for EIRs as required by AB 889;[222] these included the Divisions of Oil and Gas; Forestry; Mines and Geology; and Resource Conservation, all parts of the State Department of Conservation, which had issued department-level regulations. Such assumption at the departmental level of the responsibility for preparing and evaluating EIRs, EDF claimed, results in situations where the agency actually issuing the permits and approvals subject to CEQA is not directly involved in assessing the environmental impact of the proposed projects.

-- Few written comments on draft EIRs are obtained by agencies from other public agencies having relevant expertise, the report stated.

-- There is little use made of the data in EIRs, other than by the agency responsible for its preparation; a statewide index system for EIRs is needed, EDF said.

-- Finally, according to the report, the records of the Secretary for Resources appeared to be incomplete, suggesting that EIRs on a number of State projects either had not been prepared or had not been filed.[223]

State agencies generally carry EIR work as an overload in addition to regular tasks. With few exceptions, no additional funds or positions have been made available to State agencies for the EIR process.[224]

The State Attorney General's Office is the most prominent exception to the State Government's minimization of its role under CEQA, as should be apparent from the earlier discussion of the act's history. A second major exception is the Department of Fish and Game in the Resources Agency, which has several staff members assigned full time to prepare comments on State and local draft EIRs. The reason for this is that wildlife matters in California are almost entirely preempted by the State, and many proposed projects affect wildlife resources; as the "public agency which has jurisdiction by law," the Department receives a large number of draft EIRs on which it must comment.

A third exception is the Office of Planning and Research, which is responsible for managing the paper flow of the State's participation in the EIR process.[224] The State Clearinghouse in OPR, before enactment of CEQA, had developed a computerized system for processing Federal grant award information and A-95 review procedures. The new EIR processing requirements fit into this system with only minor changes in procedures; however, additional keypunching personnel were hired to handle the additional load on the system.[225]

## MANAGEMENT IN LOCAL GOVERNMENT

A substantial virtue of the State Administration's laissez faire approach to CEQA has been the wide range of flexibility allowed local agencies in implementing the law. The act and the guidelines specify numerous procedures, but give little indication of the professional skills or management structures to be used in executing them. The result has been a wide variety of administrative approaches adapted to local conditions.

In some cases, this adaptation has involved a considerable degree of enterprise and creativity on the part of local officials in relating the EIR to ongoing governmental processes and other new legal requirements. Little of this innovation could have been prescribed in the law, or was foreseen in the guidelines.

Although CEQA was widely ignored by local governments before the Friends of Mammoth decision, some cities and counties moved ahead on their own initiative. The City of Claremont, for example, established an Environmental Resources Task Force in October 1970 -- immediately after enactment of CEQA. This group, composed largely of college faculty, did a carefully-documented study of the community's physical environment, and helped to enact a local ordinance setting up an EIR management process that included -- some nine months before Mammoth -- a requirement for analysis of private projects.[226]

The County of San Diego had similarly enacted in June 1970 (when NEPA was law but CEQA was still in the Legislature) an ordinance to establish an "Environmental Development Agency."[227] A program of environmental studies begun at that time, together with innovative steps toward new forms of management process, later led to funding by the Ford Foundation of an ambitious program there, the "Integrated Regional Environmental Management" project (IREM). Stated intentions of this project were to use the EIR process as a means of changing relationships among agencies, of breaking down internal barriers among governmental units, and of incorporating citizens in the new activities. The project began in April 1971, two years before statewide implementation of AB 889. Its annual budget of over $400,000 was three times that of the State Office of Planning and Research, though it was still far smaller than the planning budgets of the County, the City of San Diego, or the Comprehensive Planning Organization (San Diego County's regional council of governments), which together totaled about $5 million for the year 1971-72.

## E.I.R. PROCESS FOR PRIVATE PROJECTS
## COUNTY OF SAN DIEGO

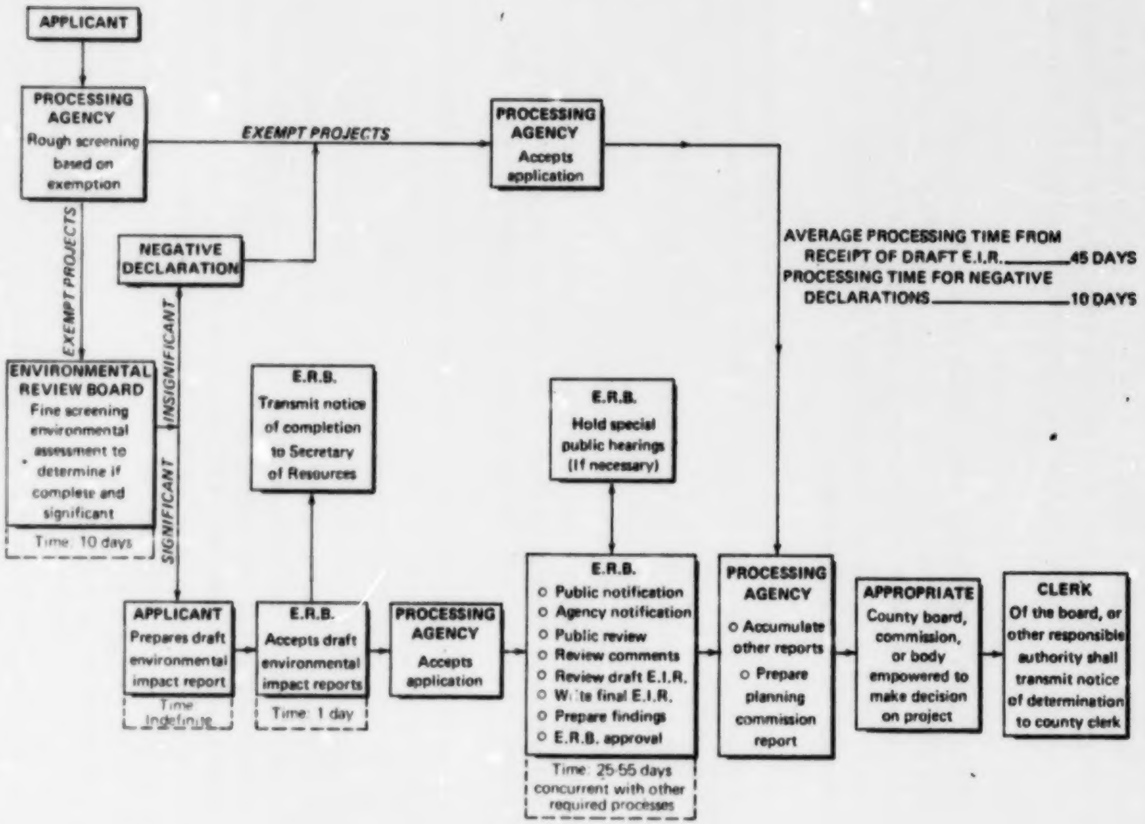
APPLICANT
PROCESSING AGENCY Rough screening based on exemption
EXEMPT PROJECTS
PROCESSING AGENCY Accepts application
EXEMPT PROJECTS
NEGATIVE DECLARATION
ENVIRONMENTAL REVIEW BOARD Fine screening environmental assessment to determine if complete and significant
Time: 10 days
INSIGNIFICANT
SIGNIFICANT
AVERAGE PROCESSING TIME FROM RECEIPT OF DRAFT E.I.R. ____ 45 DAYS
PROCESSING TIME FOR NEGATIVE DECLARATIONS ____ 10 DAYS
E.R.B. Transmit notice of completion to Secretary of Resources
E.R.B. Hold special public hearings (If necessary)
APPLICANT Prepares draft environmental impact report
Time Indefinite
E.R.B. Accepts draft environmental impact reports
Time: 1 day
PROCESSING AGENCY Accepts application
E.R.B.
o Public notification
o Agency notification
o Public review
o Review comments
o Review draft E.I.R.
o Write final E.I.R.
o Prepare findings
o E.R.B. approval
Time: 25-55 days concurrent with other required processes
PROCESSING AGENCY
o Accumulate other reports
o Prepare planning commission report
APPROPRIATE County board, commission, or body empowered to make decision on project
CLERK Of the board, or other responsible authority shall transmit notice of determination to county clerk

FIGURE 1.

The EIR management process adopted by San Diego County and developed through the IREM project is similar in structure to the approach now used by the majority of California's cities and counties. However, it involves considerably more staff effort, and a higher degree of technical content, than is usual. It also involves more steps. The EIR procedures adopted by most local governments can be described as streamlined versions of the San Diego County process.[228]

The EIR process for private projects in the County of San Diego is illustrated by Figure 1. The "Processing Agency" is the County Office of Environmental Management, a successor to the functions of the IREM staff. It is organized as a unit of the Environmental Development Agency, which is also the parent agency of the County Planning Department. The Environmental Review Board (ERB) is composed of staff representatives of OEM and the Departments of Planning, Public Health, and County Engineer.

The fee for initial screening to determine whether a project would have a "significant effect" is $70. If an EIR is required, it is prepared in draft form, generally by a private consultant on behalf of the applicant. Typical costs to the developer on an average project of a few acres to a few tens of acres would range from $5,000 to $10,000. Processing fees charged by the County for review and preparation of the final EIR range from $150 to $900, depending on the type of application. The final EIR, prepared by the OEM staff, consists of:

1. The draft EIR as amended by the ERB;

2. A section containing the comments received through the consultation process, either verbatim or in summary;

3. The response of the ERB to the significant environmental points raised in the review and consultation process.

The Environmental Impact Analysis Division of OEM was budgeted in 1973-74 for 14 full-time staff positions, including 11 professional analysts. The number of EIRs processed during 1973 was 192, including 172 on private projects. The total number of environmental assessments processed was 2,378, of which 2,258 were for private projects (94.9%).

A few other examples of how local governments have implemented CEQA will be cited to show alternative approaches to EIR management taken in other parts of the State.

In Santa Clara County (pop. 1,000,000), at the south end of San Francisco Bay, an active effort is made by the County's EIR staff to press developers into active participation in the EIR process.[229] Here, unlike San Diego County, the EIR system is an integral element of the planning function of the County. EIRs are handled within the Planning Department by a Senior Planner-Environmental Specialist, Richard Hall, who is aided on an "as needed" basis by four other planners. Much less staff effort is available for EIR management than in San Diego. For reasons of efficiency as well as utility, emphasis is given to early consultation and review of development plans -- at the idea stage, if possible. In this context, CEQA provides the basis for a broad-ranging negotiation with a developer. Consideration is given to improvement of design concept as well as to avoidance of technical impacts.

Admittedly, the "horse-trading" aspect of this process can open the way to abuses, if the public is not attentive to the results. For the approach to be effective, much reliance must be placed on the motivations, knowledge, and design skills of staff involved in the preliminary negotiations. On the other hand, this reliance is much to the liking of the professional planners involved; for them, CEQA is providing in this context an extraordinary opportunity for bridging between two major traditional roles of planners: that of making plans, and that of struggling against development proposals that violate the plans. The newly-established "middle ground" can allow the planner to design around environmental problems, or to invoke appropriate mitigating measures. The incentive for the developer is that a negative declaration on the project may reasonably be granted, or that the conditions imposed might allow his project to pass EIR review. In some cases, projects and sites that are likely to have severe adverse effects can be identified before the developer has made major commitments of time, money, or professional pride.

Credibility of the EIR process itself is essential to the viability of planner-developer negotiations. In the case of Santa Clara County, most projects are screened out or altered before they reach the stage of formal EIR processing. The EIR itself becomes almost an "appeals" process by which the developer attempts to show that his project is not damaging. Few projects that reach this stage are able to pass through it. On the average, only about one project per month is making the attempt.

According to Mr. Hall, "developers don't try to push bad projects any more; they need better odds going in, and the ante is too high when an EIR costs $3,000 to $5,000. It's a different game from the days when a subdivider could get a draftsman friend to crank out a tentative map, file it with a $25 fee, and turn a fast profit." Hall also reports that banks and savings and loan associations in Santa Clara County are requiring, in an increasing number of cases, an analysis of environmental consequences as part of the preliminary feasibility appraisal of development projects proposed for financing. To the extent that capable design professionals and environmental analysts are hired by development companies, the Santa Clara County approach tends to become self-regulating; it may minimize the EIR workload on the planning staff, and maximize their opportunity to engage in "environmental planning."

The City of Irvine[230] offers another unusual approach to EIR management. Irvine (pop. 20,000) is in Orange County at the southern reaches of the suburbs of Los Angeles. It lies entirely within the boundaries of the privately-owned Irvine Ranch, a huge area that is gradually being transformed into a "new town." At the end of the AB 889 moratorium, early in 1973, several major EIRs for development projects within the City were already half-completed, entirely at the initiative of the developers, who were hoping to minimize the delay on the approvals of their projects. City planning staff did not feel prepared to review these EIRs in-house, and they proceeded to set up a process in which a consultant was hired by the City (in addition to the consultant which had prepared the draft report for the developer), at the applicant's expense, to review the draft and prepare a final EIR. This process seems to have worked well, though it was expensive for the applicant. Fees for the second consultant ranged from $1,500 to $7,500 for review of the EIR.

This process is now changing to a management model in which the City will be the client for the consultant on the initial EIR draft. The City's planning staff wishes to develop a system in which it serves as a "general contractor," hiring its own subcontractors to carry out aspects of the EIR analysis and management process.

The approach of the local government serving as client for the private EIR consultant is now practiced in a number of jurisdictions; it seems to be especially popular in the San Francisco Bay Area. An example is the City of Sausalito (pop. 6,000), just across the Golden Gate from San Francisco.[231] Here, a request for proposals (RFP) is circulated among a select group of consultants judged qualified by the City. The developer is allowed to choose three candidates from a list of ten. Only those three are given the RFP, and the City makes the final selection. In every case to date, the nod has gone to the firm with the lowest cost estimate, though according to City officials, this is not considered a major basis for judging consultant proposals. The City tries to specify closely the specific kinds of information most needed and desired in the immediate decisionmaking process. In Sausalito, these tend to be traffic congestion, social, and economic impacts. These items are perhaps somewhat out of line with the original purpose of CEQA, but they are permitted under the law and the guidelines.

Two full-time planners constitute the entire planning and EIR management staff for Sausalito. However, this small City has a burden of pending development proposals of about $100 million, and the town is politically divided on development issues. The EIRs have played an important role here in evaluating such proposals. A major saving grace of CEQA in Sausalito is the provision (added by AB 889) that explicitly allows public agencies to charge for the costs of preparing and reviewing EIRs, thus greatly increasing the City's capability to fund needed studies of development proposals. The planning staff spends a large portion of its time servicing EIRs in its role as contract officer and project monitor for the City. The developers deposit funds with the City to cover EIR costs. They participate in the process only by supplying information, and by discussing mitigation measures and alternative project concepts as these possibilities emerge.

Like Sausalito, the City of Del Mar is a small and very attractively situated community with considerable development pressure.[232] Del Mar (pop. 4,500) is located on the coast immediately north of the City of San Diego. Here, as in Sausalito, a planning director and one assistant handle both planning and EIR management. EIR preparation is done by a consultant under the direction of the planning director. But in this case, a "sole source" contractor is used. The consultant is available as needed, but he is not given a retainer or formal contract until a specific EIR is required. The planning director has worked with this firm to help determine how its skills might be improved for his EIR needs.

## THE IMPACT OF CEQA

The greatest impact of CEQA has been on local agencies, and particularly on private projects licensed by local agencies (since private proposals form the great majority of those on which EIRs are written). In fact, California's 58 counties, 408 cities, and numerous special-purpose jurisdictions constitute a high proportion of the total number of agencies presently applying the environmental impact assessment process at the local level in the United States.

Implementation of CEQA at the local level will be discussed in greater detail in a future report in this series on management alternatives for environmental impact analysis. That report, to be prepared late in 1974 under an extension of our present contract with EPA, will describe adaptation of the EIR process to highly variable conditions of local polity, society, economy, and physical environment.

It is difficult to generalize about the effectiveness of CEQA because of the considerable variation in management practices taken by local governments. The following report will attempt to evaluate the degree of CEQA's success in bringing environmental factors into the decision-making process within the context of each of the major approaches.

Officials from other States who inquire about CEQA invariably ask about the cost of the process and to what degree it has resulted in delays of projects. In this regard, the conclusions of a study sponsored by the San Diego Construction Industry Coordinating Council (CICC) of environmental review procedures in the San Diego region[233] are worth quoting here at some length, especially since the construction industry was among the most vocal opponents of extending the EIR requirement to private projects at the time of the AB 889 negotiations.

Project delay was a major concern of the development interests at the time of the Friends of Mammoth decision. The CICC study concluded, however, that in general,

> The time to obtain a discretionary permit which is subject to the environmental review under CEQA does not appear to be significantly affected by current environmental review procedures. Stated differently, if the CEQA environmental review process were eliminated, the time required to obtain a discretionary permit would not be significantly reduced. Exceptions to this conclusion occur when incomplete or inadequate

> information is filed by the applicant; when the findings or conclusions are appealed; and when the ecological consequences of projects are complex and difficult to analyze.
>
> This situation represents a significant improvement in conditions which existed early in 1973 when the review procedures were in the process of being established.[234]

In contrast, the review processes of the San Diego Regional Coastal Zone Conservation Commission created in 1972 were found by the CICC study to delay projects on the average of three to six months, compared to the situation prior to passage of Proposition 20. "Less than 1% of the discretionary permits subject to CEQA review are denied and approximately 12% of regular permit applications to the Coastal Commission are denied," the report found. "However, these statistics fail to recognize the degree to which projects are modified during the review."[235]

It should also be noted that these figures do not account for projects that are simply not initiated, or which are designed from the beginning with the knowledge that environmental damage will have to be avoided or mitigated. One attorney from a well-known firm who frequently appears before the South Coast Regional Coastal Zone Commission has said candidly, "I've turned down more developments in my office than the Commission has voted down."[236]

The expected high cost of CEQA was also a factor in the construction industry's earlier resistance to applying the EIR requirement to the private sector. The CICC study found that since the EIR procedures are still undergoing change,

> It is difficult for the moment to assess the cost to the San Diego region of conducting environmental reviews. It is clear, however, that the cost should be assumed to be no less than several millions of dollars per year and that it is a cost which will ultimately be paid for by the consumer.
>
> While the costs of conducting environmental reviews may be justified in terms of improved environmental quality, it is currently difficult to assess the benefits of these environmental review procedures. The reaction of environmental special interest groups and the governmental staffs appear favorable and it is believed that

> [the CICC report continues] the quality, from an environmental standpoint, of governmental planning process is being improved and the environmental quality of development projects submitted for approval has improved. However, there is little objective evidence to date to support a conclusion that the environmental review process is achieving its objective.
>
> There is a growing "establishment" of persons both in government and in the private sectors with a vested interest in conducting environmental reviews or writing environmental impact statements. This establishment may be expected to influence the perpetuation of existing environmental review procedures, regardless of true benefits, as other groups may argue for their abolishment. Since land use decisions are not determined solely by environmental quality but also by community economic and social goals, we may expect to see substantial changes in the way the community perceives the benefits of environmental review in the future.
>
> Thus, it is extremely important to assess the effectiveness of environmental review procedures as soon as possible since only in this way can vague perceptions of the cost effectiveness of the concept be understood and debated.
>
> Regardless of the ultimate effectiveness of environmental review processes [the report concludes], there can be little argument that the system and procedures used to execute the reviews be as efficient as possible. If the environmental review introduces delay and uncertainty into the permit issuance process, it is important to be sure that these delays and uncertainties are serving a substantive purpose.[237]

# SECTION XI

## ACKNOWLEDGMENTS

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All errors of fact, faults of judgment and omissions are the authors' responsibility.

## SECTION XII

## REFERENCES

1. (a) Trzyna, Thaddeus C., Environmental Impact Requirements in the States. Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA R5-73-024), July 1973. Reprinted in 102 Monitor, the monthly bulletin of the U.S. Council on Environmental Quality, May 1973, pp. 21-41. (b) Trzyna, Environmental Impact Requirements in the States: NEPA's Offspring. Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA-600/5-74-006), April 1974. This is an expanded and updated version of the above report.

2. Included in the 1974 volume of Suggested State Legislation, Council of State Governments (1150 17th St., N.W., Washington, D.C. 20036), 1973. Reprinted with commentary in Trzyna (Note 1b).

3. See Trzyna (Note 1b).

4. The State Attorney General and various environmental organizations maintain that CEQA does impose such an obligation, and the California Supreme Court has agreed to consider a case in which this is an issue. See Ronald B. Robie, "California's Environmental Quality Act: A Substantive Right to a Better Environment?" Los Angeles Bar Bulletin 49, No. 1, pp. 17-43 (1974). The key phrase is in CEQA's statement of policy: "...it is the policy of the state to: ...Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions." (CEQA, Sec. 21001, emphasis added). A bill was introduced in 1973 (SB 1051) to amend this to read: "...shall be a guiding criterion..." (emphasis added). Such an amendment would have greatly weakened the argument that agencies have an overriding duty to prevent environmental damage, and would have had the legal effect of insulating agencies from judicial review on the ground of abuse of discretion. The bill was defeated. The question of substantive obligation has also been a major issue at the Federal level. See, for example, Jane S. Kumin, "Substantive Review under the National Environmental Policy Act: EDF vs. Corps of Engineers." Ecology Law Quarterly, 3, No. 7 (1973), pp. 173 ff. See also Anderson (Note 28).

5. California's environmental problems, and the State's efforts to meet those problems, are well documented. For general treatment, see, e.g., Raymond F. Dasmann, *The Destruction of California* (Macmillan, 1965); Richard G. Lillard, *Eden in Jeopardy: Man's Prodigal Meddling with his Environment: The Southern California Experience* (Knopf, 1966); Alfred Heller, ed., *The California Tomorrow Plan*, rev. ed. (William Kaufmann, Inc., 1 First St., Los Altos, California 94022, 1973); and Robert C. Fellmeth, project director, *Politics of Land: Ralph Nader's Study Group Report on Land Use in California* (Grossman, 1973). See also the quarterly journal, *Cry California*, issued since 1965 by California Tomorrow (681 Market St., San Francisco 94105); and *California Environment Yearbook & Directory* (1973-), published by the Center for California Public Affairs (P.O. Box 30, Claremont, California 91711). The latter reference includes a detailed bibliography.

6. For summaries of California State environmental law, see Gerald R. Mylroie, ed., *California Environmental Law: A Guide* (Center for California Public Affairs, annual, 1971-); *Primer on Environmental Law in California* (California Department of Justice, 350 McAllister St., San Francisco 94102, revised periodically); and Joseph J. Brecher and Manuel E. Nestle, *Environmental Law Handbook* (University of California, Continuing Education of the Bar, 2150 Shattuck Ave., Berkeley 94704, 1970). The latter includes much California material, but is now somewhat outdated.

7. For a discussion of such agencies, see Elizabeth H. Haskell and Victoria S. Price, *State Environmental Management: Case Studies of Nine States* (Praeger, 1973). California was not among the States studied.

8. Cal. Gov't Code Secs. 12600-12616.

9. On this point, see Eleanor Cohen, ed., *Expanding the Environmental Responsibility of Local Government* (Center for California Public Affairs, 1972); and Gordon C. Rhea and others, *California Land Use Primer: A Legal Handbook for Environmentalists* (Stanford Environmental Law Society, Stanford, California 94305, 1972).

10. On the reluctance -- and failure -- of local governments to carry out State-mandated requirements, see *Local Planning in California: A Survey* (California Council on Intergovernmental Relations, 1400 Tenth St., Sacramento 95814, April 1973). This agency, which is charged with coordinating the general plan program

discussed below, made a survey to determine the progress of cities and counties in meeting the requirements of the State Planning Act. Answers were received from only 55% of the cities and 65% of the counties. The reluctance of local agencies to comply with such requirements is shown by the fact that only 38% of the cities and 67% of the counties responding had adopted a housing element of a general plan, an item that had been "required" since 1969. The report did not speculate on the performance of the local governments that did not respond to the survey.

11. Cal. Gov't Code Secs. 65100 et seq.

12. For a concise history of the California general plan requirement, see "The Local 'General Plan' in California." San Diego Law Review, 9, No. 1, pp. 1-27 (1971).

13. The major new requirements are set down in the California Government Code as follows: Every city and county is required to adopt a general plan under Secs. 65300, 65302, and 65700. The land use and circulation elements are required, respectively, under Secs. 65302 (a) and (b). The conservation and open space elements were to be completed by December 31, 1973 under Secs. 65302 (d) and (e), and Secs. 65560 et seq., respectively. The seismic safety, noise, scenic highways, and safety elements are to be completed by September 20, 1974, under Secs. 65302 (f), (g), and (h), and Sec. 65302.1, respectively. Consistency of zoning with the general plan is required by Sec. 65860.

    The new general plan program is described in General Plan Guidelines, issued in September 1973 by the California Council on Intergovernmental Relations, 1400 Tenth St., Sacramento 95814. UCLA Law Professor Donald G. Hagman, an authority on urban planning law, notes that California's State Planning Act contains the "strongest planning-regulation consistency laws in the country." (He also claims that, "If all the planners in America were enticed to California, good planning could not be produced as the Legislature has directed...because no one has provided the tenfold increase in funding necessary to prepare these crash plans.") Hagman, "NEPA's Progeny Inhabit the States -- Were the Genes Defective?" Urban Law Annual, 1974, p. 48.

14. For a discussion of special districts, see Samuel E. Wood and Alfred E. Heller, The Phantom Cities of California (California Tomorrow, 1963).

15. Environmental Bill of Rights. Assembly Select Committee on Environmental Quality, March 1970, p. 5.

16. Cal. Pub. Res. Code Secs. 21000 et seq., AB 2045 (1970 Reg. Sess.), Chap. 1433, Stats. 1970 (hereinafter cited as CEQA (1970)). Legislative history is taken from the Journals and Final Histories of the 1970 Regular Session.

17. Environmental Quality in California: A Strategy for Action. State Environmental Quality Study Council, March 1972, p. 11. This was the final report of the council, which had an important influence on the development of new State environmental policies during 1969-72. See James E. Krier, "Environmental Watchdogs: Some Lessons from a 'Study' Council." Stanford Law Review, 23, No. 4, pp. 623-675 (1971).

18. Interview with George Milias. California Journal, November 1970, p. 316.

19. California Environmental Law (see Note 6), 1971 ed.

20. "A Dozen Murders Solved." Planning and Conservation League, press release, Sacramento, October 6, 1970.

21. Environmental Bill of Rights (Note 15).

22. McCloskey, J. Michael, and John H. Zierold, "The California Legislature's Response to the Environmental Threat." Pacific Law Journal, 2, pp. 575-602 (1971).

23. 42 U.S.C. 4231 et seq., 83 Stat. 853, Pub. L. 91-190 (hereinafter cited as NEPA).

24. Environmental Law Handbook (Note 6), p. 123.

25. NEPA, Sec. 101.

26. NEPA, Sec. 102.

27. NEPA, Sec. 202.

28. A good deal has been written about the Federal environmental impact requirement. From a legal standpoint, the most comprehensive examination is Frederick R. Anderson, NEPA in the Courts: A Legal Analysis of the National Environmental Policy Act (Resources for the Future, 1755 Massachusetts Ave., N.W., Washington, D.C. 20036, 1973). The annual reports of the U.S. Council on Environmental Quality (722, Jackson Pl., N.W., Washington, D.C. 20006) are basic to an understanding of how NEPA works. Also useful is Steven B. Fishman's article, "A Preliminary Assessment of the National Environmental

Policy Act of 1969." *Urban Law Annual*, 1973, pp. 209-341. Non-legal, as well as some legal, material is included in a bibliography issued by the Council of Planning Librarians (P.O. Box 229, Monticello, Illinois 61856), "National Environmental Policy Act of 1969 (P.L. 91-190): Bibliography on Impact Assessment Methods and Legal Considerations," Exchange Bibliography No. 415, June 1973.

29. "Preparation of Environmental Impact Statements: Guidelines," 38 Fed. Reg. 20550-20562, August 1, 1973, Sec. 1500.9. This document, issued by the U.S. Council on Environmental Quality, is hereinafter referred to as the NEPA guidelines or Federal guidelines. It is included as an appendix in *Environmental Quality: The Fourth Annual Report of the Council on Environmental Quality* (Government Printing Office, 1973).

30. For a detailed comparison of CEQA and the other "little NEPAs," see Trzyna (Note 1b). Since publication of Trzyna's earlier report, New Mexico repealed its environmental policy act.

31. For the text of CEQA as amended through May 1974, see Appendix A. The original version of CEQA was printed in full in the 1971 and 1972 editions of *California Environmental Law* (Note 6).

32. CEQA (1970), Secs. 21001 (a), (b), (d), (f), and (g).

33. NEPA, Sec. 102 (2) (C). Underlining added.

34. CEQA (1970), Sec. 21100.

35. NEPA, Sec. 102 (2) (C).

36. NEPA guidelines, Sec. 1500.8 (a) (4).

37. CEQA (1970), Sec. 21101. The 1970 version of the act did not deal with the question of whether a California EIR was required to be prepared even if a Federal impact statement was written on the same project. When the law was amended in 1972, it was made clear that all or any part of a Federal impact statement can be submitted in lieu of all or any part of a CEQA EIR. CEQA (as amended), Sec. 21083.5.

38. CEQA (1970), Sec. 21102.

39. CEQA (1970), Sec. 21104.

40. CEQA (1970), Sec. 21105.

41. CEQA (1970), Sec. 21106.

42. CEQA (1970), Sec. 21107.

43. CEQA (1970), Sec. 21103.

44. CEQA (1970), Sec. 21150.

45. CEQA (1970), Sec. 21151.

46. Regarding the requirement for a conservation element of a general plan, see Note 13. The April 1973 survey made by the Council on Intergovernmental Relations (see Note 10), found that only 27% of the State's counties, and only 18% of its cities, had adopted a conservation element. However, answers were received from only 69% of the counties and 55% of the cities. The conservation element was to have been completed by July 1, 1973 (the deadline was later extended to December 31, 1973).

47. CEQA (1970), Sec. 21103.

48. Executive Order 11514, 35 Fed. Reg. 4247 (March 5, 1970).

49. 35 Fed. Reg. 7390.

50. Anderson, NEPA in the Courts (Note 28), p. 13.

51. 35 Fed. Reg. 7390 Sec. 5 (a).

52. Cal Gov't Code Sec. 65035.

53. Cal Gov't Code Secs. 65041-65049.

54. "New State Planning Office Charts Course Through Troubled Waters." California Journal, November 1970, p. 315.

55. See Haskell and Price, State Environmental Management (Note 7), pp. 260-262.

56. In 1971-72, the office was funded at $125,000 (including both State and Federal money). Press Release No. 335, Governor's Office, June 1, 1971, Appendix III.

57. Summary Report: Environmental Goals and Policy. Office of Planning and Research, March 1, 1972, p. 2. Similar statements are included in the 1973 edition of the report.

58. This delegation of responsibility is documented by Robert Andrews, Jr., in "Aftermammoth: Friends of Mammoth and the Amended California Environmental Quality Act." Ecology Law Quarterly, 3, No. 2, p. 353 (1973).

59. Cal Gov't Code Sec. 12850.

60. Proposed Guidelines for the Preparation and Evaluation of Environmental Impact Statements [sic] under the California Environmental Quality Act of 1970. Office of the Secretary

for Resources, June 21, 1971 (hereinafter cited as 1971 State guidelines).

61. CEQA (1970), Sec. 21103, called for guidelines on EIRs "required by this division," referring to Division 13 of the Public Resources Code, i.e., CEQA, which covered local, as well as State, activities. CEQA (1970), Sec. 21151.

62. Attorney General of the State of California, Petition, "In re Proposed Guidelines for the Preparation and Evaluation of Environmental Impact Statements under the California Environmental Quality Act of 1970," September 3, 1971 (hereinafter cited as Attorney General's petition). It should be noted that partisan considerations played little or no part in the CEQA controversy. The Attorney General and the Governor were members of the same political party. The leaders on both sides of the controversy have come from both political parties.

63. Ibid., pp. 30-32.

64. Ibid., pp. 1-3.

65. 1971 State guidelines, Sec. 2.

66. Attorney General's petition, pp. 3-6.

67. Ibid.

68. 1971 State guidelines, Sec. 3 (d).

69. Attorney General's petition, p. 10.

70. Ibid.. pp. 8-20.

71. Ibid., p. 9.

72. This is discussed below, p. 55.

73. Report on Proposed Interim Environmental Impact Statement Guidelines. California Assembly Committee on Environmental Quality, June 5, 1972, p. 1.

74. Interim Guidelines for the Preparation of Environmental Impact Statements [sic] under the California Environmental Quality Act of 1970. Office of the Secretary for Resources, April 28, 1972, circulated under memorandum from the Office of Planning and Research, May 5, 1972 (hereinafter cited as 1972 State guidelines).

75. Ibid., p. 1.

76. Ibid., covering memorandum.

77. Ibid., pp. 3, 22.

78. Ibid., p. 25.

79. Ibid., p. 4.

80. Committee report (Note 73), p. 1.

81. Ibid., pp. 3-4.

82. Gutting, Richard E., Jr., personal communication, December 1972. Gutting, as attorney for the Sierra Club, played an important role in the AB 889 negotiations. He subsequently became a member of the staff of the Environmental Defense Fund in Berkeley.

83. AB 1056, AB 2041, SB 177, SB 1047, SB 1061, SB 1099, SB 1619.

84. AB 301, Chap. 971 (1972). This measure was superseded by AB 889 as finally enacted, but its main point was reaffirmed in the latter bill. CEQA (as amended), Sec. 21063.

85. 352 F. Supp. 1324 (C.D. Cal. 1972).

86. Our summaries of the *Keith v. Volpe* and *EDF v. Coastside* cases follow Hagman (Note 13), pp. 14-15 and 18-19. Gutting (Note 82) was also helpful in explaining the significance of the *EDF v. Coastside* decision. The *Keith v. Volpe* ruling was partially reversed by a U.S. Circuit Court of Appeals in December 1973. *Los Angeles Times*, December 6, 1973.

87. 27 Cal. App. 3d 695, 104 Cal. Rptr. 197 (1972).

88. See Note 86.

89. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

90. See the bibliography.

91. Our summary of the early *Mammoth* history follows Andrews (Note 58), pp. 353-354.

92. Attorney General of the State of California, "Amicus Curiae Brief of the State of California in Support of Petitioners and Appellants, *Friends of Mammoth v. Mono County Board of Supervisors*," March 29, 1972.

93. See Note 89. Justice Raymond L. Sullivan filed a vigorous and lengthy dissent. The following summary of the decision is taken, in part, from News Release No. 100, Administrative Office of the Courts, San Francisco, September 21, 1972.

94. Supreme Court decision (Note 89), p. 7.

95. Ibid., p. 39, footnote 10.

96. Press release, Los Angeles Area Chamber of Commerce, October 10, 1972.

97. Wall Street Journal, October 9, 1972.

98. Press Release No. 557, Governor's Office, October 6, 1972.

99. Los Angeles Times, October 13, 1972.

100. Press Release No. 569, Governor's Office, October 16, 1972.

101. Sacramento Bee, October 20, 1972.

102. Los Angeles Times, October 22, 1972.

103. Daily Pacific Builder, December 20, 1972, p. 1.

104. Los Angeles Times, October 1, 1972.

105. Sacramento Bee, October 18, 1972.

106. Los Angeles Times, October 1, 1972.

107. Sacramento Bee, October 18, 1972.

108. Sacramento Bee, October 20, 1972.

109. Los Angeles Times, October 19, 1972.

110. Attorney General's Checklist for Implementation of the California Environmental Quality Act, October 1972, p. 1.

111. Ibid., p. 1.

112. The Governor was quoted by the Los Angeles Times on September 23 as being strongly opposed to Proposition 20.

113. The Sacramento Bee said on October 28, more than a week before the election, that the opponents of Proposition 20 had reported $873,876 in campaign expenses to the Secretary of State. The Los Angeles Times said on November 2 that the proponents of the measure (primarily the California Coastal Alliance and the Sierra Club) had reported $128,642 in campaign expenses.

114. Los Angeles Times, October 16, 1972.

115. 8 Cal. 3rd 348d, Pamphlet #33. The summary that follows is taken mainly from News Release No. 116, Administrative Office of the Courts, November 6, 1972.

116. Los Angeles Times, November 7, 1972.

117. News Release No. 116 (Note 115), pp. 1-2.

118. Ibid., p. 2.

119. California Legislature, Final Calendar, 1972 Regular Session.

120. Los Angeles Times, November 7, 1972.

121. See p. 23.

122. The following discussion of the negotiations leading up to enactment of AB 889 relies heavily on personal communications from Richard Gutting (see Note 82) in November and December 1972.

123. AB 889 as amended November 10, 1972.

124. Sacramento Bee, November 22, 1972.

125. Los Angeles Times, November 17, 1972.

126. San Jose Mercury, November 11, 1972.

127. Gutting (Note 122), December 5, 1972.

128. Chap. 1154 (1972).

129. As of June 1, 1974, only one minor amendment had been made to CEQA as changed by AB 889. See Appendix A.

130. California Environmental Quality Act (Cal. Pub. Res. Code Secs. 21000 et seq.) as amended by AB 889 (hereinafter cited as CEQA), Sec. 21065.

131. CEQA, Sec. 21066.

132. CEQA, Sec. 21171.

133. CEQA, Sec. 21169.

134. CEQA, Sec. 21060.5.

135. CEQA, Sec. 21083.

136. CEQA, Sec. 21061.

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141. CEQA, Sec. 21100 (g).

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144. CEQA, Sec. 21152.

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146. CEQA, Secs. 21167-21168.7.

147. CEQA (1970), Sec. 21151.

148. CEQA, Sec. 21174.

149. CEQA, Sec. 21084.

150. CEQA, Sec. 21082.

151. Sierra Club, "Urgent Notice to Save the Coastal Zone Conservation Act," memorandum to legislators, n.d. [November 1972].

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158. CEQA, Sec. 21060.5.

159. For detailed discussions of the effects of AB 889 from a legal point of view, see the articles by Andrews, Hagman, and Seneker listed in the bibliography.

160. "Guidelines for the Preparation and Evaluation of Environmental Impact Reports under the California Environmental Quality Act of 1970," draft. Office of the Secretary for Resources, December 19, 1972.

161. "Hearing Before the Secretary of Resources, Proposed Guidelines for Implementation of the Environmental Quality Act... Presentation of the Attorney General of California," January 30, 1973.

162. Ibid., p. 2.

163. Ibid., p. 39.

164. Ibid., pp. 13-14.

165. Ibid., p. 19.

166. Ibid., p. 35

167. Ibid., p. 32.

168. Draft guidelines (Note 160), pp. 1-3.

169. Attorney General's presentation (Note 161), pp. 3-16.

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174. *Los Angeles Times*, February 18, 1973.

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176. *Center for Law in the Public Interest v. Norman B. Livermore*, Petition for a Writ of Mandate with Memorandum of Points and Authorities, filed June 29, 1973. Petition denied, August 16, 1973.

177. Ibid., pp. 10-21.

178. Ibid., pp. 22-27.

179. Ibid., pp. 28-35.

180. Ibid., p. 36.

181. Ibid., pp. 37-62.

182. Ibid., pp. 62-65.

183. Ibid., pp. 65-77.

184. Ibid., pp. 77-80.

185. "Lawsuit Challenging Guidelines is Dismissed." *California EIR Monitor* (Office of the Secretary for Resources), *1*, No.1, pp. 1-2 (December 3, 1973).

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188. One of the authors (T.C.T.) reviewed the written comments received by the Secretary for Resources. This summary is based on one prepared by the Resources Agency staff.

189. Letter to Secretary Livermore from C.D. Mims, President, Standard Oil Company of California Western Operations, Inc., October 11, 1973.

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191. "Comments by Sacramento County on the Proposed Amendments to State Guidelines for Environmental Impact Reports," October 15, 1973. Resolution No. 73-2036, October 15, 1973.

192. "Analysis of CEQA Guidelines Issued by the Resources Agency on February 5, 1973," n.d. "Supplementary Comments to Memorandum entitled 'Analysis of CEQA Guidelines...,'" transmitted under letter to Secretary Livermore from Attorney General Younger, August 24, 1973. The original analysis was attached to the supplement.

193. "Analysis" (Note 192), p. 1.

194. Ibid., p. 5.

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197. "Supplementary Comments" (Note 192), pp. 1-12.

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199. Letter to Secretary Livermore from Richard E. Gutting, Jr., Environmental Defense Fund, Berkeley, July 11, 1973. EDF submitted its comments on behalf of itself and the Sierra Club. Similar comments were sent to the Secretary by both EDF and the club in response to the proposed amendments in September.

200. Planning Directors' report (Note 198), p. 2.

201. Gutting (Note 199).

202. Ibid.

203. One of the authors (T C.T.) attended the Los Angeles hearing. The Sacramento hearing, held two days later, was somewhat

better attended and generated more debate. Richard Gutting, personal communication, June 1974.

204. As repeated in a letter to Secretary Livermore from Jack Allen, October 25, 1973. Allen spoke as an interested citizen.

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206. Ibid., Sec. 15083 (b).

207. Ibid., Sec. 15061 (b).

208. Ibid., Secs. 15147 (b) and (c).

209. Ibid., Sec. 15014 (b).

210. Ibid., covering memorandum.

211. For information, contact the Office of the Secretary for Resources, 1416 Ninth St., Sacramento 95814.

212. Conversation with Norman E. Hill, Special Assistant to the Secretary, March 6, 1974.

213. Environmental Quality: The Second Annual Report of the Council on Environmental Quality. Government Printing Office, 1971, p. 28.

214. CEQA guidelines, December 17, 1973 (Note 205), Sec. 15160 (c).

215. That review periods are generally short, and that deadlines for many projects expire before subscribers receive the issue of the Monitor in which they are listed, is apparent from examining the listings.

216. California EIR Monitor, 1, No. 1, pp. 1-2 (December 3, 1973).

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218. Catalano, Ralph, and Richard Reich, "County Processing of EIRs." California EIR Monitor, 1, No. 4, pp. 4-21 (January 25, 1974).

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220. Publication of the Monitor is supported by subscription fees; no State funds have been set aside specially for this purpose.

221. Our description of CEQA's operation at the State level is based largely on conversations with Norman E. Hill, Special Assistant to the Secretary for Resources; and John B. Passerello,

Office of Planning and Research, October 1973.

222. CEQA, Sec. 21082.

223. "Comments of the Environmental Defense Fund and the Sierra Club on the Proposed Amendments to Guidelines for the California Environmental Quality Act of 1970 as Amended," n.d. [December 1973].

224. CEQA guidelines, December 17, 1973 (Note 205), Sec. 15161 (e).

225. Interview with John Passerello (Note 221).

226. The results of this study are discussed in Cohen (Note 9).

227. One of the authors (A.W.J.) participated in the development of the EDA and the IREM Project.

228. Our description of the San Diego County process is based largely on interviews with David Nielsen of the County staff, and on the County's EIR guidelines. Descriptions of the practices of other jurisdictions are based similarly on conversations with the officials listed, and on the local guidelines. Interviews were conducted mainly during the period from August 1973 through January 1974.

229. Interview with Richard Hall, County of Santa Clara (see Note 228).

230. Interview with Mel Roop, City of Irvine (see Note 228).

231. Interview with Herb Case, City of Sausalito (see Note 228).

232. Interview with Gary Binger, City of Del Mar (see Note 228).

233. Environmental Review Procedures in the San Diego Region. San Diego Construction Industry Coordinating Council, 1973.

234. Ibid., pp. 1-2.

235. Ibid., p. 6.

236. As quoted by Joseph Edmiston, personal communication, April 1974.

237. Environmental Review Procedures (Note 233), pp. 14-15.

## SECTION XIII

## BIBLIOGRAPHY

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> Includes articles on various aspects of the EIR process, as well as listings of impact reports and official notices related to CEQA. See pp. 49-51.

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# SECTION XIV

## APPENDICES

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# APPENDIX A

# CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 AS AMENDED[*]

(Public Resources Code Secs. 21000 et seq.)

21000. The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

21001. The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

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[*] As amended by AB 889 (Chap. 1154), 1972; AB 2338 (Chap. 56), 1974.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

21050. This division shall be known and may be cited as the Environmental Quality Act of 1970.

21060. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

21060.5. "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.

21061. "Environmental impact report" means a detailed statement setting forth the matters specified in Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized and to suggest alternatives to such a project.

21062. "Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division, a redevelopment agency is a local agency, and not a state agency, board or commission.

21063. "Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

21065. "Project" means the following:
(a) Activities directly undertaken by any public agency.
(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

21066. "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city, town, the state, and any of the agencies and political subdivisions of such entities.

21067. "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).
(b) This division shall not apply to ministerial projects proposed to be carried out or approved by public agencies.

21082. All public agencies shall adopt by ordinance, resolution, rule or regulation, objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division. The objectives, criteria and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

21083. The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. Such guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports in a manner consistent with this division.

Such guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." Such criteria shall require a finding of "significant effect on the environment" if any of the following conditions exist:

(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals;

(b) The possible effects of a project are individually limited but cumulatively considerable;

(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Such guidelines shall also include procedures for determining the lead agency pursuant to the provisions of Section 21165.

The Office of Planning and Research shall develop and prepare such proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. No later than 60 days after the effective date of this section the Secretary of the Resources Agency shall certify and adopt such guidelines pursuant to Chapter 4.5 (commencing with Section 11371) of part 1, Division 3, Title 2 of the Government Code, which shall become effective upon the filing thereof, provided that such guidelines shall not be adopted without compliance with Sections 11423, 11424, and 11425 of the Government Code.

21083.5. The guidelines prepared and adopted pursuant to Section 21083 may provide that when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an environmental impact report required by this division, provided that such statement, or the part thereof so used, shall comply with the requirements of this division and the guidelines adopted pursuant thereto.

21084. The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the list or classification of projects referred to in this section do not have a significant effect on the environment.

21085. All classes of projects designated pursuant to Section 21084, together with emergency repairs to public service facilities necessary to maintain service, shall be exempt from the provisions of this division.

21086. A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. Such a request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that such class of projects does, or does not, have a significant effect on the environment.

The Office of Planning and Research shall review each such request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of such recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 which are exempt from the requirements of this division.

The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083, 21084, and 21087.

21087. The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the Secretary of the Resources Agency in the same manner as provided in Section 21083 for the adoption of the original guidelines.

21088. The Secretary of the Resources Agency shall provide for the timely distribution to all public agencies of the guidelines and any amendments or changes thereto. In addition, the Secretary of the Resources Agency may provide for publication of a bulletin to provide public notice of the guidelines, or any amendments or changes thereto, and of the completion of environmental impact reports prepared in compliance with this division.

21089. A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing an environmental impact report for such project.

21090. For all purposes of this division all public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan shall be deemed a single project.

21100. All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact.

(d) Alternatives to the proposed action.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

(g) The growth-inducing impact of the proposed action.

21101. In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100.

21102. No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report.

Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

21104. Prior to completing an environmental impact report, the responsible state agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

21105. The responsible state agency shall include the environmental impact report as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature. It shall also be available for inspection by the general public who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the responsible state agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

21106. All state agencies, boards, and commissions shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.

21108. [Amended by AB 2338, Chap. 56, 1974.] (a) Whenever a state agency, board, or commission approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the Secretary of the Resources Agency. Such notice shall indicate the determination of the agency, board, or commission whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

(b) Whenever a state agency, board, or commission determines that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out such project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of such determination with the Secretary of the Resources Agency. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency, board, or commission responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency, board, or commission.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the Office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

21150. State agencies, boards, and commissions responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

21151. All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

21152. [Amended by AB 2338, Chap. 56, 1974.] (a) Whenever a local agency approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the county clerk of the county, or counties, in which the project will be located. Such notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

(b) Whenever a local agency determines that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out such a project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of such determination with the county clerk of the county, or counties, in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

21153. Prior to completing an environmental impact report, every local agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

21154. Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

21160. Whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report.

If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report.

21161. Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of such report to be filed with the Secretary of the Resources Agency. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

21165. When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

21166. When an environmental impact report has been prepared for a project pursuant to this division, no subsequent environmental impact report shall be required unless either of the following occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revision in the environmental impact report.

21167. [Amended by AB 2338, Chap. 56, 1974.] Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If such notice has not been filed, such action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

21167.5. Proof of prior service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in Section 21167 identifying the project shall be filed concurrently with the initial pleading in such action or proceeding.

21168. Any action or proceeding to attack, review, set aside, void or annul a determination or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

21168.5. In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

21168.6. In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to such commission.

21168.7. Sections 21168 and 21168.5 are declaratory to existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.

21169. Any project defined in subdivision (c) of Section 21065 undertaken, carried out or approved on or before the effective date of this section and the issuance by any public agency of any lease, permit, license, certificate or other entitlement for use executed or issued on or before the effective date of this section notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective. Any project undertaken by a person which was supported in whole or part through contracts with one or more public agencies on or before the effective date of this section, notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective.

21170. (a) Section 21169 shall not operate to confirm, validate or give legal effect to any project the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division and which was pending and undetermined on the effective date of this section; provided, however, that Section 21169 shall operate to confirm, validate or give legal effect to any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance by a public agency of any lease, permit, license, certificate or other entitlement for use, substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.

(b) Section 21169 shall not operate to confirm, validate or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section to be illegal, void or ineffective because of noncompliance with this division.

21171. This division, except for Section 21169, shall not apply to the issuance of any lease, permit, license, certificate or other entitlement for use for any project defined in subdivision (c) of Section 21065 or to any project undertaken by a person which is supported in whole or in part through contracts with one or more public agencies until the 121st day after the effective date of this section. This section shall not apply to any project to which Section 21170 is applicable or to any successor project which is the same as, or substantially identical to, such a project.

This section shall not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

21172. This division shall not apply to any project undertaken, carried out or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

21172.5. Until the 121st day after the effective date of this section any objectives, criteria and procedures adopted by public agencies in compliance with this division shall govern the evaluation of projects defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental impact reports on such projects when required by this division.

Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after the effective date of this section, if otherwise legally sufficient, shall, when completed, be deemed to be in compliance with this division and no further environmental impact report shall be required except as provided in Section 21166.

21173. If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

21174. No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer including, but not limited to, the powers and authority granted to the California Coastal Zone Conservation Commission or any regional coastal zone conservation commission pursuant to Division 18 (commencing with Section 27000) of the Public Resources Code. To the extent of any inconsistency or conflict between the provisions of the California Coastal Zone Conservation Act of 1972, Division 18 (commencing with Section 27000) of the Public Resources Code, and the provisions of this division, the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code shall control.

## APPENDIX B

# GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970*

## ARTICLE 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commissions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

## ARTICLE 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000-21174 as amended by Chapter 1154 of the Statutes of 1972 (AB 889). Public agencies shall adopt objectives, criteria, and procedures for the orderly evaluation of projects and the preparation of environmental documents. Such procedures, objectives, and criteria shall be consistent with CEQA and these guidelines.

## ARTICLE 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

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*As amended December 17, 1973; January 11, 1974; and March 22, 1974. Appendices are not included here. Punctuation, etc., as in original.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project. An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved. Economic information may be included in an EIR or may be presented in whatever form the agency desires.

15013. Early Preparation. An EIR is a useful planning tool to enable environmental constraints and opportunities to be considered before project plans are finalized. EIR's should be prepared as early in the planning process as possible to enable environmental considerations to influence project program or design.

15014. Application. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects. To implement these principles, objectives, criteria, and definitions, public agencies shall specify procedures to be followed which must be consistent with CEQA and these Guidelines.

(b) [Amended January 11, 1974.] Until February 15, 1974, any objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental impact reports without being brought into conformity with the amended Guidelines before February 15, 1974.

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

## ARTICLE 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

15021. Approval means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA. - California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 through 21174.

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

15026.5. Environmental Documents. Environmental documents means Draft and Final EIR's, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

15027. EIR - Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines.

(b) Final EIR means an EIR containing the information specified in Sections 15141, 15142, 15143, and 15144 of these Guidelines, a section for comments received in the consultation process, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15146.

15028. EIS - Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact report prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15029.5. Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared.

15030. Lead Agency. Lead agency means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project which may have a significant effect on the environment.

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

15033. Negative Declaration. Negative declaration means a statement by the lead agency briefly presenting the reasons that the project, although not otherwise exempt, would not have a significant effect on the environment and therefore does not require an EIR.

15034. Notice of Completion. Notice of Completion means a brief report filed with the Secretary for Resources as soon as a lead agency has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085 (c).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency when it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this report are explained in Section 15085 (g).

15035.5. [Added March 22, 1974.] Notice of Exemption. Notice of exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074 (a) and (b).

15036. Person. Person includes any person, form, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project.

(a) Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:

(1) an activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) an activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law;

(2) Proposals for legislation to be enacted by the state Legislature.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the underlying activity and not to the governmental approval process.

15038. Public agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means a public agency which proposes to undertake or approve a project, but is not the lead agency for the project. It includes all public agencies other than the lead agency which have approval power over the project.

15040. Significant Effect. Significant effect means a substantial adverse impact on the environment.

## ARTICLE 5. General Responsibilities

15050. Public Agencies. All public agencies are responsible for complying with the CEQA, according to these Guidelines. They must develop their own procedures consistent with these Guidelines. Where a public agency is a lead agency and prepares an EIR itself or contracts for the preparation, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary of the Resources Agency. The guidelines shall be officially adopted by the Secretary of the Resources Agency, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. He also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary of the Resources Agency may issue supplements to these Guidelines, containing amendments and/or additions.

15053. Fees.

(a) All lead agencies preparing EIR's or Negative Declarations for projects to be carried out by any person other than the lead agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a fee from members of the public for the actual cost of reproducing a copy of an environmental document requested by the member of the public.

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIR's within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

## ARTICLE 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that the activity in question will not have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental impact reports do not apply.

15061. Projects Controlled by State or Local Agencies.

(a) When a public agency plans to carry out or approve a project which may have a significant effect on the environment, the lead agency shall prepare environmental documents through its own efforts or by contract unless the project is otherwise exempted by these Guidelines.

(b) Where a project which may have a significant effect on the environment is to be carried out by a non-governmental person subject to approval, financial support, or some other involvement by a public agency, the lead agency will prepare environmental documents by its own efforts or by contract. However, the agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR by the agency. This information may be submitted in the form of a draft EIR, if the agency desires. If information is provided in the form of a draft EIR, the lead agency may not use the draft EIR as its own without independent evaluation and analysis. The draft EIR which is sent out for public review must reflect the independent judgement of the lead agency. The lead agency should require an applicant to specify to the best of his knowledge which other public agencies will have approval authority over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the lead agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that the EIR shall be prepared by the Lead Agency.

15063. Federal Projects.

(a) In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their comments an EIR setting forth the matters specified in Section 15143 of these Guidelines.

(b) In cases where these Guidelines require the preparation of an EIR by a lead agency and an EIS has been or will be prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an EIR required by these Guidelines, provided that the EIS or the part thereof so used, shall comply with the requirements of these Guidelines. In most cases where the federal EIS is used, discussion of mitigation measures and growth inducing impact will have to be added because these elements are required by CEQA but not by the National Environmental Policy Act.

15064. Lead Agency Principle. Where a project is to be carried out or approved by more than one public agency only one public agency shall be responsible for preparation of environmental documents and it will be the Lead Agency. Such environmental documents will be prepared by the Lead Agency in consultation with all other responsible agencies. The Lead Agency's environmental documents shall be the environmental documentation for all responsible agencies. Such responsible agencies shall consider the Lead Agency's EIR or negative declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

15065. Lead Agency Criteria.

(a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(c) Where more than one public agency equally meet the criteria set forth in paragraph b above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with an equal claim to be the lead agency, the public agencies may by agreement designate which agency will be the lead agency.

15065.5. Designation of Lead Agency by Office of Planning and Research. (a) In the event that the designation of a Lead Agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency involved may submit the dispute to the OPR for resolution.

(b) Regulations adopted by OPR for resolving lead agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a Lead Agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(c) Designation of a Lead Agency by OPR shall be based on consideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

15066. Consultation with Responsible Agencies. When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all responsible agencies (i.e., all the other public agencies involved in carrying out or approving the project) before completing a draft EIR or Negative Declaration. This early consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all responsible agencies which will issue approvals for the project. After completing the draft EIR or Negative Declaration, the Lead Agency shall also consult with other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

15067. Subsequent EIR. Where an EIR has been prepared, no additional EIR need be prepared unless:

(a) Substantial changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in a previous EIR on the project;

(b) There are substantial changes with respect to the circumstances under which the project is to be undertaken, such as a change in the proposed location of the project, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in a previous EIR.

15068. Use of a Single EIR. The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead Agencies may elect to write EIR's in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should amend the EIR it prepares for a program to apply it to an individual project with unusual characteristics.

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but should in either case comment upon the combined effect.

15070. Ongoing Project. (a) A project as defined in Section 15037 (a) (1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037 (a) (3) or in Section 15037 (a) (2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any EIR which has been completed or on which substantial work has been performed on or before February 15, 1974, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as adopted on February 3, 1973, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

15071. Emergency Project. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects are exempt from the requirements of CEQA, and no EIR is required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and it is anticipated that each public agency will make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature.

(a) Issuance of building permits.

(b) Issuance of business licenses.

(c) Approval of final subdivision maps.

(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial.

Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

15074. [Added March 22, 1974.] Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E [not included here]. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

## ARTICLE 7. Evaluating Projects

15080. Initial Study. If the project is not part of a class of projects that qualifies for a Categorical Exemption and there is a possibility that the project may have a significant effect on the environment, the lead agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved.

If the project is to be carried out by a nongovernmental person, the lead agency may require such person to submit data and information which will enable the agency to make this determination.

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the lead agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may have a significant effect on the environment in connection with most projects where they occur, include a change that:

(1) Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

(2) Has a substantial and demonstrable negative aesthetic effect;

(3) Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

(4) Causes substantial interference with the movement of any resident or migratory fish or wildlife species;

(5) Breaches any published national, state, or local standards relating to solid waste or litter control;

(6) Results in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas;

(7) Involves the possibility of contaminating a public water supply system or adversely affecting ground water;

(8) Could cause substantial flooding, erosion or siltation;

(9) Could expose people or structures to major geologic hazards.

15082. Mandatory Findings of Significance. In every case where any of the following conditions are found to exist as a result of a project, the project shall be found to have impacts with a significant effect on the environment:

(a) Impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.

(b) Impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.

(c) Impacts for a project which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

15083. Negative Declaration. (a) A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the lead agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) A Negative Declaration must include a brief description of the project as proposed, a finding that the project will not have a significant effect on the environment, a brief statement of reasons to support the findings, and a statement indicating who prepared the initial study and where a copy of it may be obtained. The Negative Declaration should normally not exceed one page in length.

(c) The Negative Declaration shall be made available to the public with sufficient time before the project is approved to provide an opportunity for members of the public to respond to the finding.

(d) After making a decision to carry out or approve the project, the lead agency shall file a Notice of Determination with a copy of the Negative Declaration attached. The Notice of Determination shall include the decision of the agency to approve or disapprove the project, the determination of the agency whether the project will have a significant effect on the environment, and a statement that no EIR has been prepared pursuant to the provisions of CEQA.

(1) If the lead agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the lead agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located.

15084. Decision to Prepare an EIR. If the lead agency finds after an initial study, that the project may have a significant effect on the environment, the lead agency must prepare or cause to be prepared an Environmental Impact Report.

15085. EIR Process. The following steps shall be followed after the lead agency decides to prepare an EIR.

(a) If the project is to be carried out by a nongovernmental person, the lead agency may require such person to submit data and information necessary to enable the lead agency to prepare the EIR. This information may be transmitted in the form of a draft EIR. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. Use of a draft EIR submitted by an applicant is discussed in Section 15061 (b).

(b) The content of an EIR is described in Article 9 of these Guidelines. Each element of an EIR must be covered, and these elements should be separated into distinct selections. Before completing a draft EIR consisting of the information specified in Section 15141, 15142, and 15143 of these Guidelines, the lead agency should consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious form later in the review process. After completing a draft EIR, the lead agency must consult with, and obtain the comments of, any public agency which has jurisdiction by law with respect to the project and may consult with any person who has special expertise with respect to any environmental impact involved. Opportunity for comments from the general public should be provided.

(c) As soon as the draft EIR is completed, but before copies are sent out for review, an official notice stating that the draft EIR has been completed must be filed with the Secretary for the Resources Agency. The notice shall include a brief description of the project, its proposed location, and an address where copies of the EIR are available. This notice shall be referred to as a Notice of Completion. A form for this notice is provided in the Appendices. The Notice of Completion will provide the basis for information published by the Secretary for Resources in an EIR Monitor. Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, a Notice of Intent will be completed and filed with the State Clearinghouse. The Notice of Intent will serve as the Notice of Completion, and no Notice of Completion need be sent to the Resources Agency. A form for the Notice of Intent is shown in Appendix D [not included here].

(d) The lead agency shall evaluate comments received from persons who reviewed the draft EIR.

(e) The lead agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

(f) The final EIR shall be presented to the decision-making body of the lead agency. The lead agency shall certify that the final EIR has been completed in compliance with CEQA and the state guidelines and that the decision-making body or administrative official having final approval authority over the project has reviewed and considered the information contained in the EIR.

(g) After making a decision on the project, the lead agency shall file a notice of action taken on the project. This notice shall be referred to as a Notice of Determination. Such notice shall include (1) the decision of the agency to approve or disapprove the project, (2) the determination of the agency whether the project will or will not have a significant effect on the environment, and (3) a statement that an EIR has been prepared pursuant to the provisions of CEQA.

(1) If the lead agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the lead agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located.

(h) If the lead agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

15086. EIR Combined with Existing Planning and Review Process. To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process being used by each responsible agency. The lead agency shall include the EIR as a part of the regular project report where such a report is used in the existing review and budgetary process.

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required by these Guidelines. Additional notices may include the determination that a project is categorically exempt, that a project is covered by the emergency exemption or the ministerial exemption, or that an activity is not covered by the act at all. Such notice should include reference to the documentation on which the determination is based.

15088. Statement of Overriding Considerations. If a public agency decides to approve a project for which serious adverse environmental consequences have been identified in an EIR, the agency may wish to make a statement identifying the other interests that warrant approval in its point of view. If such a statement is made, it should be included in the record of the project approval and may be attached to the Notice of Determination.

## ARTICLE 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of an EIR.

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets (within already established rights-of-way) sidewalks, gutters, bicycle and pedestrian trails, and similar facilities;

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition or 2500 square feet, whichever is less;

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources.

(j) Fish stocking by the California Department of Fish and Game.

(k) Division of existing multiple family rental units into condominiums.

(l) Demolition and removal of buildings and related structures except where they are of historical, archaeological or architectural significance as officially designated by Federal, State or local governmental action.

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%.

(b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new, small facilities or structures and installation of small new equipment and facilities including but not limited to:

(a) Single family residences not in conjunction with the building of two or more such units.

(b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures.

(c) Stores, offices, and restaurants if designed for an occupant load of 20 persons or less, if not in conjunction with the building of two or more such structures.

(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

15104. Class 4: Minor Alterations to Land. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

15105. Class 5: Alterations in Land Use Limitations. Class 5 consists of minor alterations in land use limitations, except zoning, including but not limited to:

(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel nor in any change in land use or density;

(b) Issuance of minor encroachment permits.

15106. Class 6: Information Collection. Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

15108. Class 8. Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

15109. Class 9: Inspections. Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10. Loans. Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

15111. Class 11: Accessory Structures. Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots.

15112. Class 12. Surplus Government Property Sales. Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report of June 1, 1973.

15113. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code as added by Chapter 1154, Statutes of 1972, exempts all ministerial projects and activities of public agencies from application of the CEQA. The matter of what is or is not a ministerial project is up to the determination of each public agency, based on an examination of the applicable laws and ordinances. Thus, while the Categorical Exemptions listed in this subsection contain classes or examples of projects which in many cases will be ministerial, the inclusion of them is in no way intended to imply any finding here that, in any particular jurisdiction, they are ministerial or discretionary. The exemptions, naturally, only apply where the project in question is found to be discretionary.

15114. Exception by location. Class 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, EXCEPT where the project may impact on an environmental resource of hazardous or critical concern as may be hereafter designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies. Moreover, all exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant -- for example, annual additions to an existing building under Class 1.

15115. Revisions to List of Categorical Exemptions. Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request.

15116. Application by Public Agencies. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIR's for projects described in the classes and examples in this article except under the provisions of Section 15114.

## ARTICLE 9. Contents of Environmental Impact Reports

15140. General. Environmental impact reports shall contain the information outlined in this article.

15141. Description of Project. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals and supporting public service facilities.

15142. Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

15143. Environmental Impact. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs.

(a) The Environmental Impact of the Proposed Action: Describe the direct and indirect impacts of the project on the environment, giving due consideration to both the short-term and long-term effects. It should include specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) Any Adverse Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented: Describe any adverse impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Do not neglect impacts on any aesthetically valuable surroundings, or on human health.

(c) Mitigation Measures Proposed to Minimize the Impact: Describe any mitigation measures written into the project plan to reduce significant environmentally adverse impacts to insignificant levels, and the basis for considering these levels acceptable. Where a particular mitigation measure has been chosen from among several alternatives should be discussed and reasons should be given for the choice made.

(d) Alternatives to the Proposed Action: Describe any known alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. Attention should be paid to alternatives capable of substantially reducing or eliminating any environmentally adverse impacts, even if these alternatives substantially impede the attainment of the project objectives, and are more costly.

(e) The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity: Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) Any Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented: Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) The Growth-Inducing Impact of the Proposed Action: Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. With respect to water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards, reference to the certification should be made.

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of the Draft EIR containing the elements described in Sections 15141, 15142, and 15143 of these Guidelines, a section listing the organizations and persons consulted and containing the comments received through the consultation process described in Article 10, either verbatim or in summary, and the response of the Lead Agency to the significant environmental points raised in the review and consultation process.

(b) The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

15147. Degree of Specificity. The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on projects such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

(c) The requirements for an EIR on a local general plan or element thereof will be satisfied by the general plan or element document, i.e., no separate EIR will be required, if: (1) the general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines and (2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

## ARTICLE 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment. The Lead Agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify reviewing agencies of the time periods.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) In order to provide sufficient time for public review, review periods for draft EIR's should not be less than 30 days nor longer than 90 days except in unusual situations. While state and local agencies are not bound by federal guidelines for implementing the National Environmental Policy Act, the time limits in the federal guidelines provide an example that may be followed in some situations. The federal guidelines require at least 90 days for review of a draft EIR and another 30 days for the review of a final EIR. Review periods of this length may be desirable for some large projects, but shorter periods may be provided where the shorter period will still allow adequate review.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

15161. Review of Environmental Impact Reports.

(a) Public agencies must develop procedures to ensure that lead agencies obtain and receive adequate comments on their EIRs from public agencies which have jurisdiction by law with respect to the project. Such procedures should include provisions for consultation with persons who have special expertise in environmental matters. It is suggested that public agencies utilize existing state, and regional or local clearinghouses to distribute EIRs and other environmental documents to appropriate agencies.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have legal jurisdiction and/or special expertise with respect to various projects and project locations. Appendix B to these Guidelines [not included here] identifies state agencies which have legal jurisdiction over, or special expertise in, various impacts. This could be the basis for a part of such listings. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the act to provide decision-makers with useful information about such factors.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the project sponsor with the name of a contact person who is available for later consultation should this prove necessary.

(e) EIR's and Negative Declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. When EIR's are submitted to the State Clearinghouse, the review periods set by the responsible agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse.

15162. Failure to Comment. If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Responsible Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

15163. Requests for Environmental Documents. The Responsible Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

15164. Public Participation. While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15165. Public Hearings.

(a) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

15166. Retention and Availability of Comments. Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

## ARTICLE 11. EIR Monitor

15180. EIR Monitor. The Secretary for Resources will provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIR's and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814